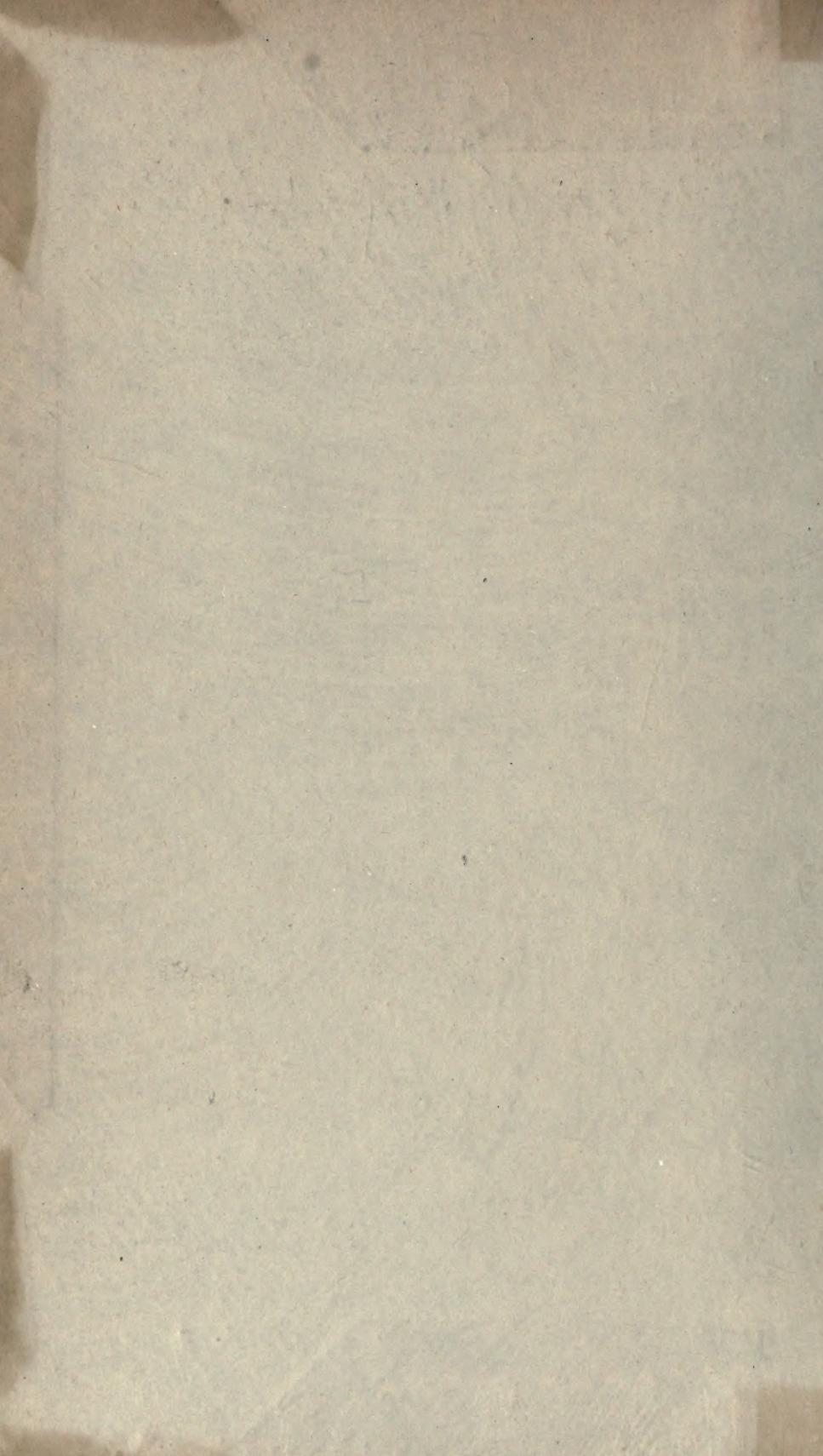


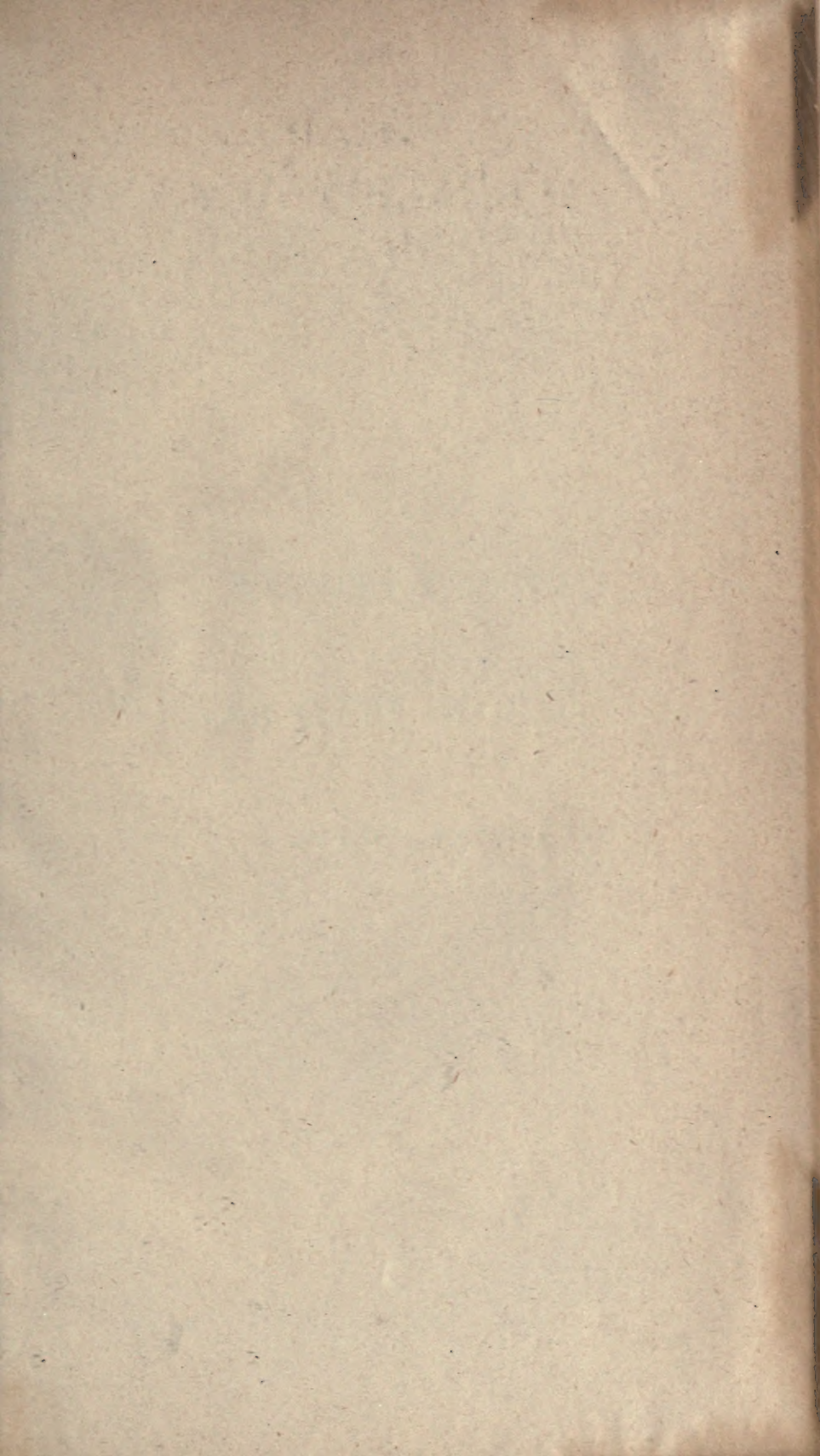


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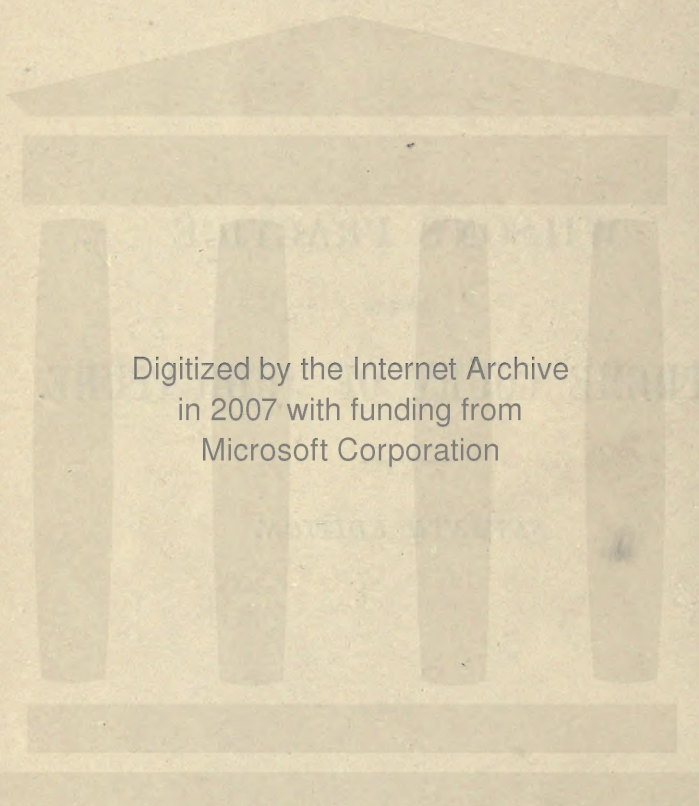




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# WILSON'S PRACTICE

OF THE

## SUPREME COURT OF JUDICATURE

CONTAINING THE

ACTS, ORDERS, RULES, AND REGULATIONS

RELATING TO THE

SUPREME COURT.

*WITH PRACTICAL NOTES.*

SEVENTH EDITION

BY

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# PREFACE

TO THE SEVENTH EDITION.

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IN the present edition of this work the notes have again been carefully revised, and the practice decisions which have been reported since the publication of the last edition have been added.

The Rules of the Supreme Court, and the Regulations with regard to practice which have been issued during the same period, are printed in this edition.

The Rules of Court are those of December, 1887, and August, 1888; the Rules under the Guardianship of Infants Act, 1886; the Order as to Supreme Court Fees, December, 1887; the Supreme Court Funds Rules, 1888; and the Order as to Fees under the Sheriffs Act, 1887. The Rules of August, 1888, will be found printed at pp. 516*a*, 516*b*, and the Rules under the Sheriffs Act, 1887, in the Addenda, at p. cxxxii.

The principal Regulations which now for the first time find a place in this work, are those relating to the Appointment of Receivers in the Queen's Bench Division, and to the Titles of Originating Summonses, &c. at pp. 712, 713. The Regulations for the Trial of Actions in the Queen's Bench Division (which were issued when this volume was on the eve of publication) are printed in the Addenda, at p. cxxxi.

The Regulations of the Supreme Court Pay Office, issued in December, 1886, and the Notice as to Unclaimed Funds in Court, have not been printed in previous editions. So much of the Conversion Act (Funds) Rules, 1888, as are still of practical importance will be found at p. 781.

The additional Practice Cases which are noted are nearly three hundred in number.

A note of the sections of the County Courts Act, 1888, which reproduce, with some alterations, the provisions referred to in sect. 67 of the Supreme Court of Judicature Act, 1873, is inserted in the Addenda, at p. cxxix.

Through the courtesy of Mr. F. D. LOWNDES, of Liverpool, the Editors are enabled to include in this edition the Directions given by Mr. Justice Kekewich with regard to the dispatch of business by the District Registrars at Liverpool and Manchester.

In the Table of Cases cited will be found references to the contemporary Reports down to October, 1888.

The Editors have to express their thanks to many friends, and especially to Mr. LAVIE, one of the Chancery Registrars, and to Mr. F. G. RANDOLPH, of the Inner Temple, for several valuable suggestions.

*October, 1888.*



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# ADDENDA.

- P. xlv, l. 11 } *Downe v. Fletcher* is also reported 59 L. T. 180.  
P. 167, l. 26 }  
P. li, l. 23 from bottom } *Re Fryman: Fryman v. Fryman* is also reported 57 L. J.  
P. 71, l. 12 } Ch. 862.  
P. lxxvi, l. 9 }  
P. 153, l. 25 from bottom } *Massey v. Heynes* is also reported 57 L. J. Q. B. 521.  
P. lxxix, l. 18 } *Re Mitchell and Governor of Ceylon* is also reported 21 Q. B. D. 408 ;  
P. 292, l. 11 } 57 L. J. Q. B. 524.  
P. 294, l. 1 }  
P. xciii, l. 6 from bottom } *Rowe v. Kelly* is also reported 59 L. T. 139.  
P. 223, l. 19 " " }  
P. exiv, l. 4 }  
P. 489, l. 14 from bottom } *Windham v. Bainton* is also reported 57 L. J. Q. B. 519.  
P. cxv, l. 26 }  
P. 366, l. 11 } *Wyman v. Knight* is also reported 59 L. T. 164.  
P. 367, l. 10 }  
P. cxi, l. 22 }  
P. 9, l. 4 from bottom }  
P. 12, l. 3 " " } *Re West Devon Great Consols Mine* is also reported 57 L. J.  
P. 42, l. 4 " " } Ch. 850.  
P. 437, l. 11 " " }  
P. 442, l. 32 " " }  
P. 447, l. 24 from bottom }  
P. 39. Add the following:—"County Court Appeals.—Appeals from County Courts will, as from the 1st of January, 1889, be regulated by Part V. of the County Courts Act, 1888 (51 & 52 Vict. c. 43)."  
Pp. 50—53. Add the following note:—

*Provisions of County Courts Act, 1888.*—The County Courts Act, 1867, is repealed as from the 1st of January, 1889, and in lieu of sect. 5 of that Act, sect. 116 of the County Courts Act, 1888 (51 & 52 Vict. c. 43), provides as follows:—

*Costs when not recoverable in High Court.*—“With respect to any action brought in the High Court which could have been commenced in a County Court, the following provisions shall apply:—

“1. If in an action founded on contract the plaintiff shall recover a sum less than twenty pounds, he shall not be entitled to any costs of the action, and if he shall recover a sum of twenty pounds or upwards, but less than fifty pounds, he shall not be entitled to any more costs than he would have been entitled to, if the action had been brought in a County Court; and

“2. If in an action founded on tort the plaintiff shall recover a sum less than ten pounds, he shall not be entitled to any costs of the action; and, if he shall recover a sum of ten pounds or upwards, but less than twenty pounds, he shall not be entitled to any more costs than he would have been entitled to if the action had been brought in a County Court; unless in any such action, whether founded on contract or on tort, a Judge of the High Court certifies that there was sufficient reason for bringing the action in that Court, or unless the High Court or a Judge thereof at Chambers shall by order allow costs.

“Provided that, if in any action founded on contract the plaintiff shall within twenty-one days after the service of the writ, or within such further time as may be ordered by the High Court or a Judge thereof, obtain an order under order fourteen of the Rules of the Supreme Court empowering him to enter judgment for a sum of twenty pounds or upwards, he shall be entitled to costs according to the scale for the time being in use in the Supreme Court.”

(1.) The words “any action brought in the High Court which could have been commenced in a County Court” are substituted for the words “any action commenced after the passing of this Act in any of her Majesty’s Superior Courts of Record.” By virtue of sect. 67 of the Judicature Act, 1873, the operation of sect. 5 of the County Courts Act, 1867, was confined to actions in which the relief sought could be given by a County Court. See *Parsons v. Tinling*, 2 C. P. D. 119; *Garnett v. Bradley*, 3 App. Cas. 944. It appears that the words “which could have been commenced in a County Court” are used in sect. 116 of the County Courts Act, 1888, for the purpose of embodying the effect of these two decisions, and that they do not effect any alteration in the law.

Pp. 50—53—*continued.*

(2.) The provision as to cases where the plaintiff, in an action of contract, recovers 20*l.* or upwards, but less than 50*l.*, is new, but it merely reproduces the effect of Ord. LXV. r. 12, and the decisions under that rule. See *post*, p. 483.

The provision as to cases where the plaintiff, in an action of tort, recovers 10*l.* or upwards, but less than 20*l.*, is new.

(3.) The provision that a plaintiff who, in an action of contract, within twenty-one days after service of the writ, or such further time as may be ordered, obtains judgment under Ord. XIV. for a sum of 20*l.*, or upwards, shall be entitled to High Court costs, is new.

In lieu of sect. 7 of the County Courts Act, 1867, sect. 65 of the County Courts Act, 1888, provides as follows:—

*Cases where Judge of High Court may order action of contract to be tried in a County Court.*]—“Where in any action of contract brought in the High Court the claim indorsed on the writ does not exceed one hundred pounds, or where such claim, though it originally exceeded one hundred pounds, is reduced by payment, an admitted set off, or otherwise to a sum not exceeding one hundred pounds, it shall be lawful for either party to the action at any time, if the whole or part of the demand of the plaintiff be contested, to apply to a Judge of the High Court at chambers to order such action to be tried in any Court in which the action might have been commenced, or in any Court convenient thereto; and on the hearing of the application the Judge shall, unless there is good cause to the contrary, order such action to be tried accordingly; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the Court mentioned in the order, who shall appoint a day for the trial of the action, notice whereof shall be sent by post or otherwise by the registrar to both parties or their solicitors, and the action and all proceedings therein shall be tried and taken in such Court as if the action had been originally commenced therein; and the costs of the parties in respect of proceedings subsequent to the order of the Judge of the High Court shall be allowed according to the scale of costs for the time being in use in the County Courts, and the costs of the order and all proceedings previously thereto shall be allowed according to the scale of costs for the time being in use in the Supreme Court.”

The effect of this section is to abolish the distinction between actions of contract transferred to the County Court merely for purposes of trial under s. 26 of the Act of 1856 (which Act is repealed by the new Act), and actions of contract transferred altogether to the County Court under s. 7 of the Act of 1867. The effect of the section is to establish a uniform procedure in the case of actions of contract remitted from the High Court to the County Court.

The wording of the section follows the wording of sect. 7 of the Act of 1867, with the following material alterations:—

(1.) *Application by either party.*—Under the Act of 1867 the application had to be made by the defendant. Under the Act of 1856 it might be made by either party. Sect. 65 of the Act of 1888 adopts the provisions of the earlier statute.

(2.) *Time of application.*—Under the above section the application may be made at any time. This provision is new. Under the Act of 1856 the application had to be made after issue joined. Under the Act of 1867 it had to be made within eight days from the service of the writ.

(3.) “*Or in any Court convenient thereto.*”—These words are new. Under the Act of 1856 the judge had a discretion to name any County Court. Under the Act of 1867 the action had to be tried in the County Court in which it might have been commenced.

(4.) The limit of 50*l.* prescribed by both the former Acts has, by the above section, been raised to 100*l.*

Sects. 8 and 10 of the Act of 1867 are respectively reproduced in sects. 69 and 66 of the County Courts Act, 1888, without material alteration, except that the words “an action of tort” are substituted in s. 66 of the Act of 1888 for the words “an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort,” which are contained in sect. 10 of the Act of 1867. The effect of this appears to be that actions of tort not *ejusdem generis* with those mentioned in the repealed statute may be remitted.

P. 166. At the end of note to O. XIII. r. 14, add:—“A writ indorsed with a claim on a bond within the statute does not come within the operation of O. XIV. r. 1. So that final judgment cannot be signed on such a writ under O. XIV.:” *Tuther v. Caralampi*, 59 L. T. 141. (Q. B. D.)

P. 167, l. 12 from bottom, add:—“*Claim on bond under 8 & 9 W. 3, c. 11.*—A writ indorsed with a claim on a bond within 8 & 9 W. 3, c. 11, does not come within the operation of this order, so that final judgment cannot be signed on such a writ, but it comes within the operation of O. XIII. r. 14:” *Tuther v. Caralampi*, 59 L. T. 141. (Q. B. D.)



- P. 182. At the end of note to O. XVI. r. 17, add :—" *Action for recovery of land.*—Such an action may be brought by the next friend of a person of unsound mind not so found ; but where the Court is of opinion on the facts of the case that such an action is not a beneficial one to the plaintiff, it will be stayed : " *Waterhouse v. Worsnop*, 59 L. T. 140. (Q. B. D.)
- P. 205, l. 10 from bottom, add :—" Where in an action for libel the defendant pleads justification, he cannot insert in his defence a paragraph setting up the plaintiff's general bad character, or bad reputation, at the date of the publication of the libel, as such a fact is not a 'material fact' within this rule, but is simply a plea which goes to damages only, within O. XXI. r. 4 : " *Wood v. Earl of Durham*, 57 L. J. Q. B. 547 ; 59 L. T. 142. (Q. B. D.)
- P. 207, l. 31, add :—" *Action for infringement of trade mark.*—Order made for particulars of the names and addresses of divers persons alleged to have been induced to purchase the defendant's goods as and for the goods of the plaintiff : " *Humphries v. Taylor Drug Co.*, 59 L. T. 177. (Kekewich, J.)
- P. 218. After O. XXI. r. 4, add :—" *Libel.*—Where, in an action of libel, the defendant pleads justification of the libel, he cannot insert in his defence a paragraph setting up the plaintiff's general bad character, or bad reputation, at the date of the publication of the libel, as such a statement is simply a plea which goes to damages only, within this rule, and is therefore inadmissible in the defence : " *Wood v. Earl of Durham*, 57 L. J. Q. B. 547 ; 59 L. T. 142. (Q. B. D.)
- P. 262, l. 26, add :—" See also *Hennessy v. Wright* (3), 57 L. J. Q. B. 530 (Q. B. D.), and cases there cited."

#### REGULATIONS FOR THE TRIAL OF ACTIONS IN THE QUEEN'S BENCH DIVISION.

The following regulations for the arrangement of the business at Nisi Prius are issued with the sanction and approval of the Lord Chief Justice of England :—

1. Separate printed lists will, for the future, be made of special and of common jury actions.
2. The whole of the actions standing for trial will not, as hitherto, be put into any printed list, but as many only will be printed at a time as are considered sufficient to occupy the Courts for about three weeks onwards. The list will be reprinted every Friday evening, and republished as soon as possible, with all necessary alterations.
3. Notice will be given upon each list as to all the different classes of actions, that no more than a certain specified number of each class will be taken within the week to which the list applies. The actions which may thus be taken within the week will constitute what will be denominated "The week's list."
4. The actions constituting the week's list will be printed at the heads of the classes to which they respectively belong.
5. No case in the week's list is to be removed from it by stay or postponement, or have its position in the list altered, except by leave of the judge on application at the time of trial.
6. No action is to be interpolated in the week's list after that list has been made up and transmitted to the printer, except by special order of a judge.
7. No action which is marked as not to be taken before a certain day later than the first working day of a week's list is to appear in that week's list, except by special leave of a judge. When a stay is taken off, the action is not to appear in the next week's list, but in the next but one.
8. Actions postponed beyond a week's list are to take their places in all subsequent lists below those which have stood for trial for the week in question.
9. Actions appearing in a week's list must, if postponed, be put off to some date beyond the week, unless by special leave of a judge, and are to be treated with reference to their subsequent position in the general list as if they had not appeared in a week's list.
10. Two days' notice to the opposite party must be given of the intention to remove a stay other than a stay for commission, and if the stay is not removed pursuant to such notice, a fresh notice must be given. A stay for commission may be removed on the application of either party, on seven days' notice, and on production to the associate of a certificate that the evidence has been returned and printed.
11. The number under which each action is originally entered for trial will always remain unaltered.
12. The general nature of each action will be stated in the margin of the list, as, for example, "Slander," "Bill of Exchange," &c. In case the pleadings should not exactly represent, as may happen, the true nature of the action, some short indication of the real question which is for trial is to be given upon the outside of the statement of claim by the solicitor who enters the action for trial.
13. Notice will be given upon every list as to how many courts will sit for the trial of each of the classes of actions which are to be taken during the week.
14. As to actions to be tried without a jury, whenever the solicitors to the parties agree, and counsel for the plaintiff certifies that in his opinion the trial will not exceed about half an hour, the cause will be put into a list of short cases, and taken on some particular day to be fixed for the purpose.

15. Whenever two courts sit for the trial of any one class of actions, the causes which are marked with even numbers will be assigned to one of those courts, and those with uneven to the other. This arrangement, however, is subject to the condition that whenever an action has appeared in a list for the day and has not been reached, it shall subsequently be put into either court, without regard to the number which it bears, so that it may stand for trial before any action which has not been in a day's list.

16. A printed list will be published at least seven days before the commencement of each sittings, containing the first week's list, and stating what courts will sit for the week in question, and what actions will be in the first day's paper.

#### ORDER AS TO FEES UNDER THE SHERIFFS ACT, 1887.

I, HARDINGE STANLEY, Baron Halsbury, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Court of Appeal and High Court of Justice, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance and execution of the powers given by the Sheriffs Act 1887, fix the fees set forth in the schedule hereto annexed as the fees to be demanded, taken, and received by any sheriff or officer of a sheriff concerned in the execution of process directed to the sheriff in the several proceedings mentioned in the said schedule as from the date of this order.

(Signed) HALSBURY, C.  
COLERIDGE, C.J.  
ESHER, M.R.  
C. E. POLLOCK, B.

We concur. HERBERT EUSTACE MAXWELL,  
SIDNEY HERBERT,

Lords Commissioners of Her Majesty's Treasury.

Dated the 31st day of August, 1888.

#### TABLE OF FEES.

##### *Execution of Writs of Fieri facias.*

- |   | £ | s. | d. |
|---|---|----|----|
| 1. For expenses incurred by the sheriff's officer in making inquiries as to the goods of an execution debtor, and as to claims for rent and other claims on the goods, the actual expenses, not exceeding under any circumstances .....   | 1 | 1  | 0  |
| 2. For seizure by the sheriff's officer. For each building or place separately rated at which a seizure is made .....   | 1 | 1  | 0  |
| 3. For mileage: to include the mileage of the bailiff or the man in possession, per mile from the sheriff's officer's residence .....   | 0 | 1  | 0  |
| The foregoing fees numbered 1, 2, and 3 shall be paid by the execution creditor, and shall not be recoverable by him although the execution proves abortive.  |   |    |    |
| 4. For man in possession, per day .....   | 0 | 5  | 0  |
| To provide his own board in every case.   |   |    |    |
| 5. For removal of goods or animals to a place of safe keeping, when necessary, the actual cost.   |   |    |    |
| 6. When goods or animals are removed, for warehousing and taking charge of the same (including feeding of animals) $2\frac{1}{2}$ per cent. on the value of the goods or animals removed, or the sum indorsed on the writ of execution, whichever is the less. No fees for keeping possession of the goods or animals to be charged after the goods or animals have been removed. |   |    |    |
| 7. For the inventory and valuation, cataloguing, letting, and preparing for sale, when no sale takes place by reason of the execution being withdrawn, satisfied, or stopped, $2\frac{1}{2}$ per cent. on the value of the goods.   |   |    |    |
| 8. For advertising and giving publicity to the sale by auction, the sum actually and necessarily paid.  |   |    |    |
| 9. For commission to the auctioneer on a sale by auction, $7\frac{1}{2}$ per cent. on the sum realised, not exceeding £100, 5 per cent. on the next £200, 4 per cent. on the next £200; and on any sum exceeding in all £500, 3 per cent. up to £1000, and $2\frac{1}{2}$ per cent. on any sum exceeding £1000.   |   |    |    |
| 10. For any sale by private contract, half the percentage allowed on a sale by auction.   |   |    |    |
| 11. Sheriff's poundage, and the fee for delivery of the writ to the under-sheriff, shall be the same as before the making of this Order.  |   |    |    |

The foregoing fees, numbered 2, 3, 4, 5, 6, 8, 9, 10, 11, shall be levied in every case in which an execution is completed by sale, as fees payable to sheriffs were levied before the making of this Order. In every case where an execution is withdrawn, satisfied, or stopped, the fees under this Order shall be paid by the person issuing the execution, or the person at whose instance the sale is stopped, as the case may be; and the amount of any costs and charges payable under this scale shall be taxed by a master of the Supreme Court or district registrar of the High Court (as the case may be), in case the sheriff and the party liable to pay such costs and charges differ as to the amount thereof.



# SUPREME COURT OF JUDICATURE ACT, 1873

(36 & 37 VICT. c. 66).

[NOTE.—By the *Supreme Court of Judicature Acts*, subsequent to the Act of 1873, and also by other Acts, especially the *Statute Law Revision Act*, 1883, a considerable number of sections and parts of sections of the *Judicature Acts* have been repealed. The repealed sections and parts of sections are printed in italic type, or their effect is given between brackets.]

An Act for the constitution of a Supreme Court and for other purposes relating to the better Administration of Justice in England; and to authorize the transfer to the Appellate Division of such Supreme Court of the Jurisdiction of the Judicial Committee of Her Majesty's Privy Council.

Act 1873,  
ss. 1, 2.

[5th August, 1873.]

WHEREAS it is expedient to constitute a Supreme Court, and to make provision for the better administration of justice in England :

And whereas it is also expedient to alter and amend the law relating to the Judicial Committee of Her Majesty's Privy Council :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

## PRELIMINARY.

1. This Act may be cited for all purposes as the "Supreme Court of Judicature Act, 1873."

Sect. 1.

Short title.

This Act is referred to as the "principal Act," in the Supreme Court of Judicature Act, 1875 (38 & 39 Vict. c. 77), and in the Rules of the Supreme Court. See O. LXXI., *post*, p. 514. The S. C. Jud. Act, 1884, provides that that Act "together with the Supreme Court of Judicature Acts, 1873 to 1879, and the Supreme Court of Judicature Act, 1881, may be cited as the Supreme Court of Judicature Acts, 1873 to 1884;" *post*, p. 114.

2. This Act, except any provision thereof which is declared to take effect on the passing of this Act, shall commence and come into operation on the second day of November, 1874.

Sect. 2.

Commence-  
ment of Act.

This section was repealed by the S. C. Jud. (Commencement) Act, 1874, and s. 2 of that Act directed that the Act should come into operation on November 1st, 1875, except as to any provisions directed to take effect on the passing of the Act.



Act 1873,  
ss. 3—5.

## PART I.

### CONSTITUTION AND JUDGES OF SUPREME COURT.

#### Sect. 3.

Union of existing Courts into one Supreme Court.

3. From and after the time appointed for the commencement of this Act, the several Courts hereinafter mentioned (that is to say), the High Court of Chancery of England, the Court of Queen's Bench, the Court of Common Pleas at Westminster, the Court of Exchequer, the High Court of Admiralty, the Court of Probate, the Court for Divorce and Matrimonial Causes, and the London Court of Bankruptcy, shall be united and consolidated together, and shall constitute, under and subject to the provisions of this Act, one Supreme Court of Judicature in England.

*Divorce and Matrimonial Causes.*—Although the Divorce Court is consolidated with the Supreme Court, and its jurisdiction transferred to the High Court (s. 16, *infra*), divorce and matrimonial causes are expressly exempted from the operation of the Rules of Procedure (O. L., r. 1; O. LXVIII., *post*, pp. 128†, 509); and the practice in all such causes remains unaltered.

*Bankruptcy.*—By ss. 9 and 33 of S. C. Jud. Act, 1875, *post*, pp. 69, 82, so much of this section as relates to the Bankruptcy Court was repealed, and until the Bankruptcy Act, 1883, came into operation, the Court of Bankruptcy remained a separate Court.

By s. 93 of the Bankruptcy Act, 1883, the London Bankruptcy Court was united to and made to form part of the Supreme Court, and the jurisdiction of the London Bankruptcy Court was transferred to the High Court of Justice.

As to the line of demarcation which formerly existed between the High Court and the Bankruptcy Court, see *Eyre v. Smith*, 2 C. P. D. 435; *Ex parte Brown*, 11 Ch. D. 148; *Ex parte Musgrave*, 10 Ch. D. 94; *Barter v. Dubeux*, 7 Q. B. D. 413, and the judgments in *Ex parte Reynolds*, 15 Q. B. D. 169.

#### Sect. 4.

Division of Supreme Court into a Court of original and a Court of appellate jurisdiction.

4. The said Supreme Court shall consist of two permanent Divisions, one of which, under the name of "Her Majesty's High Court of Justice," shall have and exercise original jurisdiction, with such appellate jurisdiction from inferior Courts as is hereinafter mentioned, and the other of which, under the name of "Her Majesty's Court of Appeal," shall have and exercise appellate jurisdiction, with such original jurisdiction as hereinafter mentioned as may be incident to the determination of any appeal.

The first-mentioned Court is designated "The High Court of Justice" throughout the Rules and Forms, and is so termed in practice. The other Court is called in practice "The Court of Appeal," and is referred to by that name in the Appellate Jurisdiction Act, 1876.

*Appellate Jurisdiction of the High Court.*—See ss. 45 and 47, *infra*; s. 15 of S. C. Jud. Act, 1875, *post*, p. 74; ss. 8, 18, 23, and 24 of S. C. Jud. Act, 1884, *post*, pp. 116, 118, 120, 121; O. LIX., rr. 3 to 6, and rr. 7 to 16, *post*, pp. 451—454.

*Jurisdiction of the Court of Appeal.*—See ss. 18 and 19, *infra*, and notes thereto; and O. LVIII., *post*, p. 434.

#### Sect. 5.

Constitution of High Court of Justice.

5. Her Majesty's High Court of Justice shall be constituted as follows: The first Judges thereof shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, the several Vice-Chancellors of the High Court of Chancery, the Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes, the several Puisne Justices of the Courts of Queen's Bench and Common Pleas respectively, the several

Junior Barons of the Court of Exchequer, and the Judge of the High Court of Admiralty: except such, if any, of the aforesaid Judges as shall be appointed ordinary Judges of the Court of Appeal.

Act 1873,  
s. 5.

Subject to the provisions hereinafter contained, whenever the office of a Judge of the said High Court shall become vacant, a new Judge may be appointed thereto by Her Majesty, by Letters Patent. All persons to be hereafter appointed to fill the places of the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron*, and their successors respectively, shall continue to be appointed to the same respective offices, with the same precedence, and by the same respective titles, and in the same manner, respectively as heretofore. Every Judge who shall be appointed to fill the place of any other Judge of the said High Court of Justice *shall be styled in his appointment "Judge of Her Majesty's High Court of Justice,"* and shall be appointed in the same manner in which the Puisne Justices and Junior Barons of the Superior Courts of Common Law have been heretofore appointed: *Provided always, that if at the commencement of this Act the number of Puisne Justices and Junior Barons who shall become Judges of the said High Court shall exceed twelve in the whole, no new Judge of the said High Court shall be appointed in the place of any such Puisne Justice or Junior Baron who shall die or resign while such whole number shall exceed twelve, it being intended that the permanent number of Judges of the said High Court shall not exceed twenty-one.*

All the Judges of the said Court shall have in all respects, save as in this Act is otherwise expressly provided, equal power, authority, and jurisdiction; and shall be addressed in the manner which is now customary in addressing the Judges of the Superior Courts of Common Law.

The Lord Chief Justice of England for the time being shall be President of the said High Court of Justice in the absence of the Lord Chancellor.

*Style of Puisne Judges.*—By S. C. Jud. Act, 1877, s. 4, *post*, p. 94, the style of the Puisne Judges of the High Court is "Justices of the High Court."

*Lord Chancellor.*—By S. C. Jud. Act, 1875, s. 3, *post*, p. 65, the proviso printed in italics was repealed; and the Lord Chancellor is not to be deemed a permanent Judge of the High Court, and the provision as to appointment and style is not to apply to him.

*Transfer of Judges to Court of Appeal, &c.*—S. 15 of App. Jur. Act, 1876, *post*, p. 87, provided for the transfer of three Judges from the High Court to the Court of Appeal; and the vacancies so occasioned were not to be filled up except in the cases and to the extent provided for by s. 18 of the same Act. See *post*, p. 90. The S. C. Jud. Act, 1877, s. 2, *post*, p. 93, authorized the appointment of an additional Judge of the High Court: who, by s. 3, *post*, p. 93, is attached to the Chancery Division, subject to the power of removal to another division; and by s. 6 of S. C. Jud. Act, 1881, *post*, p. 105, power is given to make such appointment from time to time, subject to the limitations therein specified.

*Chief Justices and Chief Baron.*—By s. 32, *infra*, the distinctive office of either of the Chief Justices, the Chief Baron, or the Master of the Rolls, may be abolished upon a vacancy occurring; and by Order in Council, dated 16th December, 1880, the offices of Chief Justice of the Common Pleas and Chief Baron have been abolished.

*Master of the Rolls.*—By s. 2 of S. C. Jud. Act, 1881, the Master of the Rolls is made a Judge of the Court of Appeal only, and s. 5 of the same Act provides for an additional Judge of the High Court to fill his place. See *post*, pp. 104, 105.



## SUPREME COURT OF JUDICATURE ACT, 1873.

Act 1873,  
ss. 5—11.

*President of P. D. & A. Division.*—By s. 4 of S. C. Jud. Act, 1881, *post*, p. 105, the President of the Probate Divorce and Admiralty Division is made an ex-officio member of the Court of Appeal, and s. 3 of S. C. Jud. Act, 1884, *post*, p. 114, provides for his precedence in that Court.

*Admiralty.*—As to the Judge of the Admiralty Court, see S. C. Jud. Act, 1875 s. 8, *post*, p. 68.

Sect. 6.

**6. [Constitution of Court of Appeal.]**

This section was repealed by S. C. Jud. Act, 1875, *post*, p. 82. The constitution of the Court of Appeal is governed by s. 4 of that Act, as modified by s. 15 of App. Jur. Act, 1876.

Sect. 7.

Vacancies by  
resignation of  
Judges, and  
effect of  
vacancies  
generally.

**7.** The office of any Judge of the said High Court of Justice, or of the said Court of Appeal, may be vacated by resignation in writing, under his hand, addressed to the Lord Chancellor, without any deed of surrender; and the office of any Judge of the said High Court shall be vacated by his being appointed a Judge of the said Court of Appeal. The said Courts respectively shall be deemed to be duly constituted during and notwithstanding any vacancy in the office of any Judge of either of such Courts.

As to the vacancies caused by the transfer of Judges from the High Court to the Court of Appeal, under s. 15 of App. Jur. Act, 1876, see note to s. 5, *supra*. See also ss. 3 and 6 of S. C. Jud. Act, 1881, *post*, pp. 105, 106.

Sect. 8.

Qualifications  
of Judges.

**8.** Any barrister of not less than ten years' standing shall be qualified to be appointed a Judge of the said High Court of Justice; and any person who if this Act had not passed would have been qualified by law to be appointed a Lord Justice of the Court of Appeal in Chancery, or has been a Judge of the High Court of Justice of not less than one year's standing, shall be qualified to be appointed an ordinary Judge of the said Court of Appeal: Provided, that no person appointed a Judge of either of the said Courts shall henceforth be required to take, or to have taken, the degree of Serjeant-at-Law.

Not required  
to be Ser-  
jeants-at-  
Law.

By 14 & 15 Vict. c. 83, s. 1, any barrister of fifteen years' standing might be appointed a Lord Justice.

Sect. 9.

**9. [Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.]**

This section was repealed by S. C. Jud. Act, 1875, *post*, p. 82, and s. 5 of that Act is substituted for it.

Sect. 10.

**10. [Precedence of Judges.]**

This section was repealed by S. C. Jud. Act, 1875, *post*, p. 82, and s. 6 of that Act substituted for it.

Sect. 11.

Saving of  
rights and  
obligations of  
existing  
Judges.

**11.** Every existing Judge, who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal, shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom, if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act



under any Commission of Assize, Nisi Prius, Oyer and Terminer, or Gaol Delivery, unless he was so liable by usage or custom at the commencement of this Act.

Act 1873,  
ss. 11—13.

Service as a Judge in the High Court of Justice, or in the Court of Appeal, shall, in the case of an existing Judge, for the purpose of determining the length of service entitling such Judge to a pension on his retirement, be deemed to be a continuation of his service in the Court of which he is a Judge at the time of the commencement of this Act.

As to the meaning of "existing," see s. 100, *infra*; and as to the obligation to go circuit, &c., of the additional ordinary Judges of Appeal appointed under App. Jur. Act, 1876, see s. 15 of that Act, *post*, p. 87.

By s. 8 of S. C. Jud. Act, 1875, *post*, p. 68, the positions of the then Admiralty Judge and Registrar were regulated, and provision was made for the terms on which their successors were to be appointed.

#### Sect. 12.

12. If, in any case not expressly provided for by this Act, a liability to any duty, or any authority or power, not incident to the administration of justice in any Court, whose jurisdiction is transferred by this Act to the High Court of Justice, shall have been imposed or conferred by any statute, law, or custom, upon the Judges or any Judge of any of such Courts, save as hereinafter mentioned, every Judge of the said High Court shall be capable of performing and exercising, and shall be liable to perform and empowered to exercise every such duty, authority, and power, in the same manner as if this Act had not passed, and as if he had been duly appointed the successor of a Judge liable to such duty, or possessing such authority or power, before the passing of this Act. Any such duty, authority, or power, imposed or conferred by any statute, law, or custom, in any such case as aforesaid, upon the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, or the Lord Chief Baron, shall continue to be performed and exercised by them respectively, and by their respective successors, in the same manner as if this Act had not passed.

Provisions for  
extraordinary  
duties of  
Judges of the  
former Courts.

By s. 25 of S. C. Jud. Act, 1881, *post*, p. 112, any special statutory power or duty heretofore exercised or performed by the Chief Justice of the Common Pleas or Chief Baron of the Exchequer may now be exercised or performed by the Lord Chief Justice of England.

#### Sect. 13.

13. Subject to the provisions in this Act contained with respect to existing Judges, there shall be paid the following salaries, which shall in each case include any pension granted in respect of any public office previously filled by him to which the Judge may be entitled:

Salaries of  
future Judges.

To the Lord Chancellor, the sums hitherto payable to him;

To the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, the same annual sums which the holders of those offices now respectively receive;

To each of the ordinary Judges of the Court of Appeal, and to each of the other Judges of the High Court of Justice, the sum of five thousand pounds a year.

No salary shall be payable to any additional Judge of the Court of Appeal appointed under this Act; but nothing in this Act shall in any

**Act 1873,  
ss. 13—16.**

*way prejudice the right of any such additional Judge to any pension to which he may be by law entitled.*

This section, so far as it relates to additional Judges of the Court of Appeal, was repealed by s. 33 of S. C. Jud. Act, 1875, *post*, p. 82.

**Sect. 14.**

Retiring pensions of future Judges of High Court of Justice, and ordinary Judges of Court of Appeal.

**14.** Her Majesty may, by Letters Patent, grant to any Judge of the High Court of Justice, or to any ordinary Judge of the Court of Appeal who has served for fifteen years as a Judge in such Courts, or either of them, or who is disabled by permanent infirmity from the performance of the duties of his office, a pension, by way of annuity, to be continued during his life :

In the case of the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer*, the same amount of pension which at present might under the same circumstances be granted to the holder of the same office :

In the case of any ordinary Judge of the Court of Appeal or any other Judge of the High Court of Justice, the same amount of pension which at present might under the same circumstances be granted to a Puisne Justice of the Court of Queen's Bench.

The pensions of the various Judges referred to are regulated by numerous statutes, which are indexed in the official Index to the Statutes under the heading "Supreme Court of Judicature, England, 1 (a), 1 (b), and 2 (b)."

**Sect. 15.**

Salaries and pensions: how to be paid.

**15.** Subject to the provisions in this Act contained with respect to existing Judges, the salaries, allowances, and pensions payable to the Judges of the High Court of Justice, and the ordinary Judges of the Court of Appeal respectively, shall be charged on and paid out of the Consolidated Fund of the United Kingdom of Great Britain and Ireland, or the growing produce thereof: such salaries and pensions shall grow due from day to day, but shall be payable to the persons entitled thereto, or to their executors or administrators, on the usual quarterly days of payment, or at such other periods in every year as the Treasury may from time to time determine.

## PART II.

### JURISDICTION AND LAW.

**Sect. 16.**

Jurisdiction of High Court of Justice.

**16.** The High Court of Justice shall be a Superior Court of Record, and, subject as in this Act mentioned, there shall be transferred to and vested in the said High Court of Justice the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any of the Courts following (that is to say):—

- (1.) The High Court of Chancery, as a Common Law Court as well as a Court of Equity, including the jurisdiction of the Master of the Rolls, as a Judge or Master of the Court of Chancery, and any jurisdiction exercised by him in relation to the Court of Chancery as a Common Law Court;
- (2.) The Court of Queen's Bench;
- (3.) The Court of Common Pleas at Westminster;
- (4.) The Court of Exchequer, as a Court of Revenue, as well as a Common Law Court;
- (5.) The High Court of Admiralty;
- (6.) The Court of Probate;



Act 1873,  
s. 16.

- (7.) The Court for Divorce and Matrimonial Causes ;
- (8.) *The London Court of Bankruptcy* ;
- (9.) The Court of Common Pleas at Lancaster ;
- (10.) The Court of Pleas at Durham ;
- (11.) The Courts created by Commissions of Assize, of Oyer and Terminer, and of Gaol Delivery, or any of such Commissions.

The jurisdiction by this Act transferred to the High Court of Justice shall include (subject to the exceptions hereinafter contained) the jurisdiction which, at the commencement of this Act, was vested in, or capable of being exercised by, all or any one or more of the Judges of the said Courts, respectively, sitting in Court or Chambers, or elsewhere, when acting as Judges or a Judge, in pursuance of any statute, law, or custom, and all powers given to any such Court, or to any such Judges or Judge, by any statute ; and also all ministerial powers, duties, and authorities, incident to any and every part of the jurisdiction so transferred.

*Bankruptcy.*—The words in italics were repealed by S. C. Jud. Act, 1875 ; but by s. 93 of the Bankruptcy Act, 1883, the jurisdiction of the London Bankruptcy Court was transferred to the High Court.

**EFFECT OF SECTION.**—The whole of the jurisdiction of the Courts enumerated was transferred by this section to the High Court of Justice. See the effect of this consolidation of powers commented on by Jessel, M. R., *Salt v. Cooper*, 16 Ch. D. 544, at p. 549. The jurisdiction is not extended. Therefore, an action to enforce a charge on land, where the sum for which the charge is claimed is less than 10*l.*, will not lie. Before the Act such an action could not have been brought in Chancery, because the amount was too small, and could not have been brought at law, because a Common Law Court had no jurisdiction. The Act having merely transferred to the High Court the jurisdiction of the old Courts of Chancery and Common Law, the High Court has no jurisdiction in such a case: *Westbury Rwr. San. Authority v. Meredith*, 30 Ch. D. 387.

**Jurisdiction of Probate Divorce and Admiralty Division :**

A. *Probate proceedings.*—By virtue of this section, the Probate Divorce and Admiralty Division has the same power to restrain any dealing with a ship or share in a ship as the Court of Chancery had under the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 65: *Nicholas v. Dracachis*, 1 P. D. 72.

B. *Admiralty proceedings.*—The practice of the Admiralty Court, by which interest is allowed on the damages awarded from the time when the claim arose, extends to actions over which the Court had no jurisdiction before the S. C. Jud. Acts, and also to actions transferred to the Probate Divorce and Admiralty Division for the purpose of assessment of damages by the registrar and merchants: *The Gertrude*, 13 P. D. 105. Actions under Lord Campbell's Act may now be brought in the Probate Divorce and Admiralty Division, but they are not Admiralty actions, and are not affected by S. C. Jud. Act, 1873, s. 25, sub-s. 9: *The Bernina*, 12 P. D. 58 ; *The Orwell*, 13 P. D. 80.

C. *Divorce proceedings.*—A Judge can in divorce proceedings grant an injunction under s. 25, sub-s. 8: *Noakes v. Noakes*, 4 P. D. 60 ; and attach a debt to enforce payment of costs: *Whitaker v. Whitaker*, 7 P. D. 15 ; and can allow interrogatories: *Harvey v. Lovekin*, 10 P. D. 122 ; see also *Marshall v. Marshall*, 5 P. D. 19.

**Jurisdiction of Chancery Division.**—In an action by a husband in the Chancery Division to enforce a separation deed, a counter-claim by the wife for a judicial separation was allowed to be set up: *Besant v. Wood*, 12 Ch. D. 605. A Judge of the Chancery Division can by order compel the attendance of a witness before an arbitrator under the power given by s. 4 of the 3 & 4 Will. 4, c. 42: *Clarbrough v. Toothill*, 17 Ch. D. 787. So too he has power to grant or revoke probate of a will, but on grounds of convenience the jurisdiction will not be exercised: *Pinney v. Hunt*, 6 Ch. D. 98 ; see too *Re Ivory*, 10 Ch. D. 372, at p. 375 ; *Bradford v. Young*, 26 Ch. D. 656 ; but see *Priestman v. Thomas*, 9 P. D. 70, 210, where it was said that the Probate Division had exclusive jurisdiction to grant or revoke probate.



Act 1873,  
ss. 16, 17,  
(1)—(4).

*Of the Queen's Bench Division.*—As to the power of the Queen's Bench Division to deal with the rectification of deeds, see *Mostyn v. West Mostyn Coal Co.*, 1 C. P. D. 145; *Breslauer v. Barwick*, 36 L. T. 52; *Story v. Waddle*, 4 Q. B. D. 289; or with the custody of infants, see *Re Goldsworthy*, 2 Q. B. D. 75. An agreement of compromise in a divorce action may be made an order of the Queen's Bench Division: *Smythe v. Smythe*, 18 Q. B. D. 544. A Judge of the Queen's Bench Division has jurisdiction to order delivery of a solicitor's bill of costs, where no part of the business has been transacted in any Court; for the jurisdiction conferred on the Lord Chancellor and Master of the Rolls by the Solicitors Act, 1843 (6 & 7 Vict. c. 73), s. 37, has been transferred; but by s. 34, sub-s. 2 (*post*, p. 33), such jurisdiction has been assigned to the Chancery Division, to which Division such applications should therefore be made: *Re Pollard*, 20 Q. B. D. 656.

**PROCEDURE.**—The procedure provided by the Rules of Court is not of such wide application.

*Divorce causes.*—The practice remains unchanged. See s. 18 of S. C. Jud. Act, 1875, *post*, p. 76; O. LXVIII., *post*, p. 509.

*Criminal Proceedings.*—The practice also remains unchanged. See s. 19 of S. C. Jud. Act, 1875, *post*, p. 76; O. LXVIII., *post*, p. 509.

*Proceedings on the Crown Side and Revenue proceedings.*—With certain specified exceptions the practice in these proceedings remains unchanged. See O. LXVIII., *post*, p. 509, and the Crown Office Rules, 1886. As to removal from the County Court in a case affecting the revenue of the Crown, see *Churton v. Wilkin*, W. N. (1884), 62.

*Court of County Palatine of Lancaster.*—This is not interfered with. See *Re Alison's Trusts*, 8 Ch. D. 1; *Re Longdendale Co.*, *ibid.* 150; *Townsend v. Townsend*, 23 Ch. D. 100. Appeals from this Court go to the Court of Appeal, under s. 18, sub-s. 2, *infra*.

*Patents.*—The jurisdiction of the Master of the Rolls over the Register of Patent Proprietors, conferred by the 15 & 16 Vict. c. 83, s. 3, is vested by sub-s. 1 in the High Court: *Re Morgan's Patent*, 24 W. R. 245.

*Mandamus.*—A prerogative writ of mandamus cannot issue otherwise than from the Queen's Bench Division: see *Glossop v. Heston Local Board*, 12 Ch. D. 102, at pp. 115, 122. See also the note to s. 24, sub-s. 5, *infra*.

#### Sect. 17.

Jurisdiction  
not transferred  
to High Court.

**17.** There shall not be transferred to or vested in the said High Court of Justice, by virtue of this Act—

- (1.) Any appellate jurisdiction of the Court of Appeal in Chancery, or of the same Court sitting as a Court of Appeal in Bankruptcy:

*Bankruptcy Appeals.*—By s. 104 of the Bankruptcy Act, 1883, appeals from the High Court of Justice in Bankruptcy lie to the Court of Appeal. Appeals from County Courts exercising bankruptcy jurisdiction lie to a Divisional Court of the High Court of Justice. See the Bankruptcy Appeals (County Courts) Act, 1884.

- (2.) Any jurisdiction of the Court of Appeal in Chancery of the County Palatine of Lancaster:

- (3.) Any jurisdiction usually vested in the Lord Chancellor or in the Lords Justices of Appeal in Chancery, or either of them, in relation to the custody of the persons and estates of idiots, lunatics, and persons of unsound mind:

*Lunatics.*—As to the jurisdiction of the Lords Justices in respect of lunatics, see s. 7 of S. C. Jud. Act, 1875, *post*, p. 67. As to the jurisdiction of the Court of Chancery formerly, and now of the High Court of Justice, in respect to the guardianship and maintenance of persons of unsound mind not so found, see *Re Bligh*, 12 Ch. D. 364; *Re Brandon*, 13 Ch. D. 773 (correcting *Fane v. Fane*, 2 Ch. D. 124); *Re Tuer*, 32 Ch. D. 39; *Re Grimmett's Trusts*, 56 L. J., Ch. 419; *Re Silva's Trusts*, 36 W. R. 366.

- (4.) Any jurisdiction vested in the Lord Chancellor in relation to grants of Letters Patent, or the issue of commissions or

other writings, to be passed under the Great Seal of the United Kingdom :

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ss. 17, 18.

- (5.) Any jurisdiction exercised by the Lord Chancellor in right of or on behalf of Her Majesty as visitor of any college, or of any charitable or other foundation :
- (6.) Any jurisdiction of the Master of the Rolls in relation to records in London or elsewhere in England.

*Special jurisdiction of the Master of the Rolls.*—This is apparently preserved by s. 2 of S. C. Jud. Act, 1881, *post*, p. 104, which makes him a Judge of the Court of Appeal only. As to the meaning of the sub-section, see *Re Morgan's Patent*, 24 W. R. 245.

It was held that the Master of the Rolls by virtue of this sub-section might direct the amendment of a clerical error in a specification filed in the Patent Office: *Re Johnson's Patent*, 5 Ch. D. 503. See now s. 90 of the Patents Act, 1883. Section 18 of the last-named Act does not affect the jurisdiction of the M. R. to allow an amendment in a specification filed under Patent Law Amendment Act, 1852, ss. 27, 28: *Re Gare's Patent*, 26 Ch. D. 105.

Sect. 18.

**18.** The Court of Appeal established by this Act shall be a Superior Court of Record, and there shall be transferred to and vested in such Court, all jurisdiction and powers of the Courts following (that is to say):—

Jurisdiction  
transferred to  
Court of  
Appeal.

- (1.) All jurisdiction and powers of the Lord Chancellor and of the Court of Appeal in Chancery, in the exercise of his and its appellate jurisdiction, and of the same Court as a Court of Appeal in Bankruptcy.

As to the Court of Appeal and its constitution, see S. C. Jud. Act, 1875, s. 4, *post*, p. 66.

As to appellate jurisdiction in Bankruptcy, see note to last preceding section.

- (2.) All jurisdiction and powers of the Court of Appeal in Chancery of the County Palatine of Lancaster, and all jurisdiction and powers of the Chancellor of the Duchy and County Palatine of Lancaster, when sitting alone or apart from the Lords Justices of Appeal in Chancery as a Judge of rehearing or appeal from decrees or orders of the Court of Chancery of the County Palatine of Lancaster :

See *Re Longdendale Cotton Spinning Co.*, 8 Ch. D. 150; *Lee v. Nuttall*, 12 Ch. D. 61; *Townsend v. Townsend*, 23 Ch. D. 100.

*Service out of jurisdiction.*—As to the power of the Court of Appeal to order service out of the jurisdiction of the Palatine Court of a writ issued from such Court, see *Re Watmough*, 24 Ch. D. 280. Before an application is made to the Court of Appeal for leave to serve a writ issued out of the Palatine Court upon a defendant who is out of the jurisdiction of that Court, but within the jurisdiction of the High Court, the leave of the Vice-Chancellor of the Palatine Court for the issue of the writ must first be obtained: *Walker v. Dodds*, 37 Ch. D. 188; and see 17 & 18 Vict. c. 82, s. 8; Chancery of Lancaster Rules, 1884, O. II., r. 50; O. XII., rr. 1, 7.

- (3.) All jurisdiction and powers of the Court of the Lord Warden of the Stannaries assisted by his assessors, including all jurisdiction and powers of the said Lord Warden when sitting in his capacity of Judge :

*Appeals from Stannaries Court.*—The provision in s. 32 of the Stannaries Act, 1869 (32 & 33 Vict. c. 19), requiring a deposit of 20*l.* to be made with the registrar of the Stannaries Court on appeal from the Vice-Warden, is not abrogated by the S. C. Jud. Acts, or by any of the rules thereunder: *Re West Devon Great Consols Mine*, 38 Ch. D. 51.

- (4.) All jurisdiction and powers of the Court of Exchequer Chamber :



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ss. 18, 19.

- (5.) All jurisdiction vested in or capable of being exercised by Her Majesty in Council, or the Judicial Committee of Her Majesty's Privy Council, upon appeal from any judgment or order of the High Court of Admiralty, or from any order in lunacy made by the Lord Chancellor, or any other person having jurisdiction in lunacy.

#### JURISDICTION OF THE COURT OF APPEAL.

*A. Original.*—The Court of Appeal has no power to hear an original petition: *Re Dunraven Adare Coal and Iron Co.*, 33 L. T. 371; *Brown v. Collins*, 25 Ch. D. 56, at p. 57; nor has it power to vacate the enrolment of a decree of the Court of Chancery enrolled before the Act: *Allan v. Electric Telegraph Co.*, 24 W. R. 898. The Court of Appeal has jurisdiction to entertain an application to strike a solicitor off the roll on the ground of misconduct, although not brought by way of appeal: *Re Whitehead*, 28 Ch. D. 614.

*B. Concurrent.*—See *Cropper v. Smith*, 24 Ch. D. 305.

*Rehearing.*—The Court of Appeal has, it seems, no power to rehear an appeal from the High Court, *Flower v. Lloyd*, 6 Ch. D. 297, and it is doubtful whether it has any power to rehear a bankruptcy appeal: *Re Hooper*, 14 Ch. D. 1. There being no power to allow an appeal from the Court of Appeal to the House of Lords, in the case of appeals from County Courts in Bankruptcy, by virtue of s. 2 of the Bankruptcy Appeals (County Courts) Act, 1884, the Court of Appeal, before giving judgment, in two cases, directed that such appeals should be reargued; see *Re Barber*, 17 Q. B. D. 259; *Re Morritt*, 18 Q. B. D. 222.

*Judgment of Mayor's Court.*—An appeal from a judgment of the Lord Mayor's Court upon demurrer lies to the Court of Appeal, not to a Divisional Court of the High Court under s. 45, *infra*: *Le Blanch v. Reuter's Telegraph Co.*, 1 Ex. D. 408. But in ordinary appeals from the Mayor's Court where error on the record is not alleged, the appeal lies to a Divisional Court, and is governed by s. 45: *Appleford v. Judkins*, 3 C. P. D. 489.

*Divorce Appeals.*—The jurisdiction of the full Court of Divorce, as established under the Divorce Acts, was not transferred to the Court of Appeal by this section: *Westhead v. Westhead*, 2 P. D. 1; *Gladstone v. Gladstone*, *ibid.* 143; but the omission was remedied by s. 9 of S. C. Jud. Act, 1881, *post*, p. 106.

See further the note to the next section.

Sect. 19.  
Appeals from  
High Court.

19. The said Court of Appeal shall have jurisdiction and power to hear and determine appeals from any judgment or order, save as hereinafter mentioned, of Her Majesty's High Court of Justice, or of any Judges or Judge thereof, subject to the provisions of this Act, and to such Rules and Orders of Court for regulating the terms and conditions on which such appeals shall be allowed, as may be made pursuant to this Act.

Powers of  
Court of  
Appeal.

For all the purposes of and incidental to the hearing and determination of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by this Act, the said Court of Appeal shall have all the power, authority, and jurisdiction by this Act vested in the High Court of Justice.

**GENERAL RIGHT OF APPEAL.**—This section gives a general right of appeal from every order or judgment of the High Court or any Judge thereof. "A Judge's order is always subject to appeal unless it is expressly forbidden:" *Pollock v. Rabbits*, 21 Ch. D. 466, per Jessel, M. R. See, as to the effect of the section, *Ormerod v. Todmorden Mill Co.*, 8 Q. B. D. 664; *Overseers of Walsall v. L. & N. W. Ry.*, 4 App. Cas. 30.

"*Judgment or Order.*"—A certificate of a judge at the trial (as *e.g.*, under the Patents, Designs and Trade Marks Act, 1883, s. 31) is not a judgment or order within this section, and therefore no appeal lies from the grant of such a certificate: *Haslam Foundry, &c. Co. v. Hall*, 20 Q. B. D. 491.

*Quarter Sessions.*—An appeal lies from an order of the Queen's Bench Division



discharging a rule *nisi* for quashing an order of Quarter Sessions as to the validity of a rate: *Overseers of Walsall v. L. & N. W. Ry.*, 4 App. Cas. 30.

Act 1873,  
s. 19.

*Special Case.*—Where a special case is stated for the opinion of the Queen's Bench Division, its jurisdiction is judicial, not merely consultative, and its decision on the case is a "judgment or order" within the meaning of the section: *Overseers of Walsall v. L. & N. W. Ry.*, *ubi sup.* See also *Reg. v. Swindon Local Board*, 49 L. J., Q. B. 522, commenting on the last case; *Reg. v. Savin*, 6 Q. B. D. 309, and *Reg. v. Illingworth*, 32 W. R. 451. So, too, an appeal lies from the decision of a Divisional Court upon a special case stated by an umpire under the Lands Clauses Act, 1845: *Bidder v. North Staffordshire Ry. Co.*, 4 Q. B. D. 412; or upon a special case stated by an arbitrator pursuant to the Common Law Procedure Act, 1854: *Shubbrook v. Tufnell*, 9 Q. B. D. 621.

*Taxes Management Act.*—By s. 59 of the Taxes Management Act, 1880 (43 & 44 Vict. c. 19), it is expressly provided that an appeal shall lie to the Court of Appeal from the decision of the High Court or any Judge thereof upon any case stated under the provisions of that Act, and from the Court of Appeal to the House of Lords.

*Petty Sessions.*—An appeal lies from an order of the Queen's Bench Division discharging a rule for a certiorari to remove into that Court an order of petty sessions for the maintenance of a pauper lunatic: *Reg. v. Pemberton*, 5 Q. B. D. 95.

*Habeas Corpus.*—An appeal lies from an order of the High Court on application for *habeas corpus* whether the order grants or refuses the writ: *Ex parte Rev. James Bell Cox*, 20 Q. B. D. 1.

*Orders of Divisional Courts affecting County Court Procedure.*—An appeal lies from the order of a Divisional Court directing a writ of prohibition to issue to a County Court Judge: *Barton v. Titchmarsh*, 49 L. J., Ex. 573; also from the order of a Divisional Court discharging a rule for an order on a County Court Judge to hear an action: *Morgan v. Rees*, 6 Q. B. D. 508; and from the order of a Divisional Court refusing a new trial in a case sent for trial to a County Court under 19 & 20 Vict. c. 108, s. 26: *Babbage v. Coulbourn*, 46 L. T. 515.

*Municipal Election Petition.*—Before the S. C. Jud. Act, 1881, it was held that an appeal lay from an interlocutory order of a Divisional Court relating to a Municipal Election Petition: *Harmon v. Park*, 6 Q. B. D. 323; but see now s. 14 of that Act, *post*, p. 108, and note thereto.

*Case stated under 12 & 13 Vict. c. 45.*—In a case stated under this Act for the opinion of the Queen's Bench Division, the opinion given by the Queen's Bench Division is an "order" within the meaning of this section, and is, therefore, subject to appeal. The order is interlocutory and not final: *Corporation of Peterborough v. Parish of Wiltcliffe*, 12 Q. B. D. 1.

*Order settling form of Conveyance.*—An appeal lies from the order of a Judge settling the form of a conveyance where a sale has been ordered by the Court: *Pollock v. Rabbits*, 21 Ch. D. 466.

*Interpleader order in Bankruptcy.*—An appeal lies from such an order: *Ex parte Streeter*, 19 Ch. D. 216 (a case under the Bankruptcy Act, 1869, the decision of which is applicable to the Bankruptcy Act, 1883).

*Divisional Courts.*—See O. LIX., *post*, p. 449, and notes thereto; also O. XXXIX., *post*, p. 328, as to motions for new trials.

*Failure to prosecute appeal in Divisional Court.*—Where a party appealed from the order of a Judge at Chambers to a Divisional Court, and failed to prosecute his appeal there, the Court of Appeal declined to entertain an appeal from the order of the Divisional Court, dismissing his appeal: *Walker v. Budden*, 5 Q. B. D. 267. Perhaps by consent an appeal may be heard although the appellant made default in appearance in the Court below: *Allum v. Dickinson*, 9 Q. B. D. 632. See, too, *Ex parte Streeter*, 19 Ch. D. 216, where there had been a miscarriage of justice in the Court below.

*Appeal from order of reference to an official referee.*—An appeal lies direct to the Court of Appeal, and not to a Divisional Court from the order of a Judge at Nisi Prius referring the issues in an action to an official referee: *Hoeh v. Boor*, 49 L. J., C. P. 665.

*From decision of Judge of assize.*—The appeal lies direct to the Court of Appeal: *Mellor Cunningham & Co. v. Royal Exchange Shipping Co.*, W. N. (1885), 172.

Act 1873,  
s. 19.

### STATUTORY RESTRICTIONS ON RIGHT OF APPEAL.

By s. 45, *infra*, the judgment of a Divisional Court upon an appeal from an inferior Court is to be final, unless special leave to appeal be given.

By s. 47, *infra*, the judgment of the Court for Crown Cases Reserved is final; and no appeal lies to the Court of Appeal in criminal matters save for error on the record.

By s. 49, *infra*, no appeal lies, except by leave, from any order made by consent, or as to costs only which by law are left to the discretion of the Court.

By s. 50, *infra*, an appeal does not, without leave, lie direct to the Court of Appeal from an order made at Chambers. See, too, O. LIX., r. 1 (i), *post*, p. 450.

By s. 20 of App. Jur. Act, 1876, *post*, p. 90, no appeal lies where by statute it is provided that the decision of a Court or Judge is to be final.

By s. 9 of S. C. Jud. Act, 1881, *post*, p. 106, such appeals as might have been brought under the Divorce Acts to the Full Court of Divorce may now be brought to the Court of Appeal; and by s. 10 of the same Act a limitation is placed on appeals from orders absolute for dissolution or nullity of marriage where an appeal might have been brought from the order *nisi*.

By s. 14 of S. C. Jud. Act, 1881, *post*, p. 108, the decision of the High Court on questions of law in registration and parliamentary and municipal election cases is made final, unless special leave to appeal to the Court of Appeal is given.

*Restrictions on appeals in Bankruptcy.*—See Bankruptcy Act, 1883, s. 104, and Bankruptcy Rules, 1886, r. 129. See also Bankruptcy Appeals (County Courts) Act, 1884.

**RE-HEARING BY HIGH COURT.**—The effect of this section, read with ss. 17, 18, *supra*, is to take away the old power of the Court of Chancery to re-hear its decrees. The jurisdiction to re-hear an order of the High Court is now vested in the Court of Appeal: *Re St. Nazaire Co.*, 12 Ch. D. 88; *Re May*, 28 Ch. D. 516; *Re Manchester Economic Co.*, 24 Ch. D. 488. But where a wrong order has been made by reason of misrepresentation or mistake of fact, the error may be corrected by a new order made notwithstanding the former order: *Stanier v. Evans*, 34 Ch. 470. In a probate case where the Judge tried the issues of fact without a jury, and then gave judgment on his findings, it was held that an appeal lay from his judgment to the Court of Appeal, but the Court at the same time expressed an opinion that the party decided against might have applied to the Court below for a re-hearing under rule 60 of the old Probate Rules: *Sugden v. Lord St. Leonards*, 1 P. D. 154. Having regard to *Re St. Nazaire Co.*, cited above, it is very doubtful how far this expression of opinion could now be sustained. As to re-hearing appeals from County Courts in bankruptcy, see *Re Barber*, 17 Q. B. D. 259; *Re Morrill*, 18 Q. B. D. 222. As to re-hearing an appeal by the Court of Appeal, see note to last section, *ante*, p. 10. A Judge, however, can always reconsider his decision until the order has been drawn up: *Re St. Nazaire Co.*, 12 Ch. D. 88, at p. 91. See, for an example, *Miller's Case*, 3 Ch. D. 661, and see *passim A.-G. v. Tomline*, 7 Ch. D. 388. See also O. XXVIII., r. 11, *post*, p. 245, which gives power to correct accidental slips or errors in judgments.

*Action in nature of bill of review.*—See, as to this, *Falcke v. Scottish Imperial Insurance Co.*, 35 W. R. 794; and note to O. LVIII., r. 1, *post*, p. 434.

*Undertaking not to appeal.*—Where an order of reference, made before the Act, provided that neither party should bring error, and the arbitrator stated his award in the form of a special case for the Queen's Bench Division, it was held that no appeal lay from the judgment of the Queen's Bench Division thereon: *Jones v. Victoria Graving Dock Co.*, 2 Q. B. D. 314. The undertaking not to appeal must be a formal one. In *Re Hull and County Bank*, 13 Ch. D. 261, a claim in a winding-up proceeding was disallowed. On an intimation from the counsel for the claimant that he did not intend to appeal, costs were not asked for. The order dismissing the claim without costs, when drawn up, contained no reference to any undertaking not to appeal. Subsequently an appeal was brought, and the Court of Appeal held that they could not refuse to entertain it, as no undertaking not to appeal was embodied in the order. It is within the implied authority of counsel to give an undertaking not to appeal, and such undertaking cannot be withdrawn in the absence of misapprehension or surprise inducing the undertaking: *Re West Devon Great Consols Mine*, 38 Ch. D. 51.

*Questions of fact.*—An appeal lies from the judgment of a Judge upon fact as well as upon law: *The Glanibanta*, 1 P. D. 283; *Sugden v. Lord St. Leonards*,



1 P. D. 154; *Bigsby v. Dickinson*, 4 Ch. D. 24: see, too, *Jones v. Hough*, 5 Ex. D. 115. But when the evidence has been taken *viva voce*, the Court of Appeal gives great weight to the consideration that the Judge in the Court below has seen the demeanour of the witness, and is loth to overrule him: *Bigsby v. Dickinson*, *ubi supra*; *The Milanese*, 43 L. T. 107. As to the time for appealing from the judgment of a Judge on a question of fact, see *Dollman v. Jones*, 12 Ch. D. 553.

Act 1873,  
ss. 19—22.

**Discretionary orders.**—An appeal lies from discretionary orders, but the Court of Appeal do not, as a general rule, interfere with the exercise of a discretion of which they do not approve, unless it appears that the discretion was exercised on a wrong principle. See *e.g.* orders allowing or disallowing pleadings: *Golding v. Wharton Salt Works Co.*, 1 Q. B. D. 374; *Watson v. Rodwell*, 3 Ch. D. 380, see per Mellish, L.J., at p. 383, as to the principle; *Huggons v. Tweed*, 10 Ch. D. 359. See also *Byrd v. Nunn*, 7 Ch. D. 284, at pp. 286, 287, as to leave to amend at trial. As to directions as to mode of trial, see *Swindell v. Birmingham Syndicate*, 3 Ch. D. 127. As to leave to defend under O. XIV., see *Papayanni v. Coutpas*, W. N. (1880) 109; also *Wallingford v. Mutual Society*, 5 App. Cas. 685. As to damages, see *Webster v. British Empire Assurance Co.*, 15 Ch. D. 169, at p. 180, per Thesiger, L.J. As to disallowing interrogatories, see *Fisher v. Owen*, 8 Ch. D. 645, at p. 653. As to an order refusing to commit for contempt, see *Jarman v. Chatterton*, 20 Ch. D. 493; *Re Wray*, 36 Ch. D. 138. As to an order referring compulsorily to an official referee, see *Ormerod v. Todmorden Mill Co.*, 8 Q. B. D. 664. As to when an appeal lies from the decision of the Admiralty Judge refusing to entertain an action for wages on the ground of the protest of the foreign Consul, see *The Leon XIII.*, 8 P. D. 121. Where, by the express terms of a statute an absolute discretion is given, it seems that no appeal lies: *The Amstel*, 2 P. D. 186. As to appeals from orders striking solicitors off the rolls, see *Re Hardwick*, 12 Q. B. D. 148.

**Prærogative Mandamus.**—The importance of the return to writs of mandamus and of the subsequent proceedings thereon is much diminished by this section. An appeal now lies from the order directing the writ to issue; so, unless there be facts in dispute, any question of law can be raised and an appeal brought without the embarrassment or delay of pleadings. In *Julius v. Bishop of Oxford*, 5 App. Cas. 214, the Queen's Bench Division ordered that a mandamus should issue to the bishop commanding him to take proceedings under the Church Discipline Act against a clerk. An appeal against this order was brought to the Court of Appeal, and the case was ultimately taken to the House of Lords. See, too, *Reg. v. Bishopswearmouth*, 5 Q. B. D. 67, at p. 73; and *Reg. v. Holl*, 7 Q. B. D. 575.

**Person not party below.**—Where a person is affected by an order of the High Court, but is not a party to the proceedings, he may still obtain leave to appeal if he could have done so before the Judicature Acts: *Re Markham*, 16 Ch. D. 1; but not otherwise: *Watson v. Cave*, 17 Ch. D. 19. See, too, *Re Clagett*, 20 Ch. D. 134; *Ex parte Tucker*, 12 Ch. D. 308. As to the test, see *Crawcour v. Salter*, 30 W. R. 329.

**Practice on appeals.**—See O. LVIII., *post*, p. 434. As to applying for a new trial in the Court of Appeal where a case has been tried by a Judge without a jury, see O. XXXIX., r. 1, *post*, p. 328, and O. XL., rr. 3 to 5, *post*, p. 334.

## 20. [No appeal from High Court or Court of Appeal to House of Lords or Judicial Committee.]

Sect. 20.

This section was repealed by the App. Jur. Act, 1876, s. 24, *post*, p. 91.

## 21. [Power to transfer jurisdiction of Judicial Committee by Order in Council.]

Sect. 21.

This section was repealed by the App. Jur. Act, 1876, s. 24, *post*, p. 91.

**22.** From and after the commencement of this Act the several jurisdictions which by this Act are transferred to and vested in the said High Court of Justice and the said Court of Appeal respectively shall cease to be exercised, except by the said High Court of Justice and the said Court of Appeal respectively, as provided by this Act; and no further or other appointment of any Judge to any Court whose jurisdiction is so transferred shall be made except as provided

Sect. 22.

Transfer of  
pending business.



Act 1873,  
ss. 22, 23.

by this Act : Provided, that in all causes, matters, and proceedings whatsoever which shall have been fully heard, and in which judgment shall not have been given, or having been given shall not have been signed, drawn up, passed, entered, or otherwise perfected at the time appointed for the commencement of this Act, such judgment, decree, rule, or order may be given or made, signed, drawn up, passed, entered, or perfected respectively, after the commencement of this Act, in the name of the same Court, and by the same Judges and officers, and generally in the same manner, in all respects as if this Act had not passed; and the same shall take effect, to all intents and purposes, as if the same had been duly perfected before the commencement of this Act; and every judgment, decree, rule, or order of any Court whose jurisdiction is hereby transferred to the said High Court of Justice or the said Court of Appeal, which shall have been duly perfected at any time before the commencement of this Act, may be executed and enforced, and, if necessary, amended or discharged by the said High Court of Justice and the said Court of Appeal respectively, in the same manner as if it had been a judgment, decree, rule, or order of the said High Court or of the said Court of Appeal; and all causes, matters, and proceedings whatsoever, whether civil or criminal, which shall be pending in any of the Courts whose jurisdiction is so transferred as aforesaid at the commencement of this Act, shall be continued and concluded as follows (that is to say), in the case of proceedings in error or on appeal, or of proceedings before the Court of Appeal in Chancery, in and before Her Majesty's Court of Appeal; and, as to all other proceedings, in and before Her Majesty's High Court of Justice. The said Courts respectively shall have the same jurisdiction in relation to all such causes, matters, and proceedings as if the same had been commenced in the said High Court of Justice, and continued therein (or in the said Court of Appeal, as the case may be) down to the point at which the transfer takes place; and so far as relates to the form and manner of procedure, such causes, matters, and proceedings, or any of them, may be continued and concluded, in and before the said Courts respectively, either in the same or the like manner as they would have been continued and concluded in the respective Courts from which they shall have been transferred as aforesaid; or according to the ordinary course of the said High Court of Justice and the said Court of Appeal respectively (so far as the same may be applicable thereto), as the said Courts respectively may think fit to direct.

**Sect. 23.**

Rules as to  
exercise of  
jurisdiction.

**23.** The jurisdiction by this Act transferred to the said High Court of Justice and the said Court of Appeal respectively shall be exercised (so far as regards procedure and practice) in the manner provided by this Act, or by such Rules and Orders of Court as may be made pursuant to this Act; and where no special provision is contained in this Act or in any such Rules or Orders of Court with reference thereto, it shall be exercised as nearly as may be in the same manner as the same might have been exercised by the respective Courts from which such jurisdiction shall have been transferred, or by any of such Courts.

*Interrogatories in nullity suit.*—The High Court having power to exercise the jurisdiction of the old Ecclesiastical Courts, may order interrogatories to be administered to the respondent in a nullity suit: *Harvey v. Lovelock*, 10 P. D. 122.

*Costs between solicitor and client.*—The Court of Chancery formerly had, and the High Court, in matters of equitable jurisdiction, now has, a general discretionary power to award costs as between solicitor and client: *Andrews v. Barnes*, 36 W. R. 705.

*Power to make rules.*—See s. 17 of S. C. Jud. Act, 1875, *post*, p. 74; and s. 17 of App. Jur. Act, 1876, *post*, p. 89.

Act 1873,  
ss. 23, 24,  
(1), (2).

Sect. 24.

24. In every civil cause or matter commenced in the High Court of Justice law and equity shall be administered by the High Court of Justice and the Court of Appeal respectively according to the Rules following:

Law and equity to be concurrently administered.

- (1.) If any plaintiff or petitioner claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, instrument, or contract, or against any right, title, or claim whatsoever asserted by any defendant or respondent in such cause or matter, or to any relief founded upon a legal right, which heretofore could only have been given by a Court of Equity, the said Courts respectively, and every Judge thereof, shall give to such plaintiff or petitioner such and the same relief as ought to have been given by the Court of Chancery in a suit or proceeding for the same or the like purpose properly instituted before the passing of this Act.

Equities of plaintiff.

*Effect of section.*—This and the next section undertake to deal with the long-standing anomaly, to which so many palliations had from time to time been applied, but which had never been removed—by which different Courts recognized different rights and duties, applied different remedies to the same case, and in some cases even enforced rules of law actually in conflict with one another. The removal of the last-mentioned defect, actual conflict of law, is provided for by s. 25. The rest of the matter is dealt with in the present section.

The provisions of this section may be shortly summarized thus:—

The plaintiff may assert an equitable claim in any Court (*sub-s. 1*).

The plaintiff may obtain an equitable remedy in any Court (*ibid.*).

The defendant may raise any equitable answer or defence in any Court; that is to say, anything which would formerly have been good by way of answer if the suit had been brought in Chancery (*sub-s. 2*), or would have afforded ground for an injunction if the action had been brought at law (*sub-s. 5*).

The defendant may assert, by way of counter-claim against the plaintiff, any claim, legal or equitable, which he might have raised by a cross-suit at law or in equity (*sub-s. 3*).

The defendant may obtain relief relating to or connected with the original subject of the action against other persons, whether already parties or not (*ibid.*). As to the extent to which such relief may be obtained, see note to sub-s. 3, *infra*; O. XVI., rr. 48—55, *post*, pp. 188—193, and notes thereto; and O. XIX., r. 3, *post*, p. 203, and notes thereto.

Every Court is to recognize equitable rights incidentally appearing (*sub-s. 4*).

No cause is to be restrained by injunction; but what would have been ground for injunction is to be raised by way of defence, or upon an application to stay proceedings (*sub-s. 5*); or, if more convenient, the cause may be transferred to another Division (*post*, pp. 367 *et seq.*).

Subject to these provisions, common law rights and duties are to be recognized (*sub-s. 6*).

Every Court is to apply all appropriate remedies, and dispose of all matters in controversy (*sub-s. 7*).

*Definitions of terms.*—For definitions of “plaintiff,” “petitioner,” “defendant,” see s. 100, *infra*. The words “or respondent” are omitted in sub-ss. 2 and 3; but see s. 100, *roc.* “defendant.”

- (2.) If any defendant claims to be entitled to any equitable estate or right, or to relief upon any equitable ground against any deed, Equitable defences.



Act 1873,  
s. 24, (2), (3).

instrument, or contract, or against any right, title, or claim, asserted by any plaintiff or petitioner in such cause or matter, or alleges any ground of equitable defence to any claim of the plaintiff or petitioner in such cause or matter, the said Courts respectively, and every Judge thereof, shall give to every equitable estate, right, or ground of relief so claimed, and to every equitable defence so alleged, such and the same effect, by way of defence against the claim of such plaintiff or petitioner, as the Court of Chancery ought to have given if the same or the like matters had been relied on by way of defence in any suit or proceeding instituted in that Court for the same or the like purpose before the passing of this Act.

*Equitable defence.*—Where a defence shows grounds entitling the defendant in equity to be relieved against a contract sought to be enforced by the plaintiff, any Division in which the action is pending may give effect to the equitable defence, at least so far as to treat it as a defence to the action: *Mostyn v. West Mostyn Coal Co.*, 1 C. P. D. 145. See, too, *Breslauer v. Barwick*, 24 W. R. 901; *Gathercole v. Smith*, 7 Q. B. D. 626. Or if the action be in a Division other than the Chancery, the Court may order it to be transferred to the Chancery Division. See O. XLIX., *post*, p. 367, and notes thereto. See also *Eyre v. Hughes*, 2 Ch. D. 148; *Hughes v. Metropolitan Ry. Co.*, 2 App. Cas. 439; and *Marshall v. Marshall*, 5 P. D. 19, where in a suit for restitution of conjugal rights effect was given to an equitable defence that the wife was bound by a covenant in the deed of separation not to sue for restitution.

A defence of purchaser for value without notice does not entitle a defendant, where the defendant puts the plaintiff to proof of his title in an action brought for recovery of land, to claim privilege from production of documents in his possession relating to the subject-matter of the action: *Emmerson v. Ind*, 12 App. Cas. 300.

Counter-  
claims and  
third parties.

- (3.) The said Courts respectively, and every Judge thereof, shall also have power to grant to any defendant in respect of any equitable estate or right, or other matter of equity, and also in respect of any legal estate, right, or title claimed or asserted by him, all such relief against any plaintiff or petitioner as such defendant shall have properly claimed by his pleading, and as the said Courts respectively, or any Judge thereof, might have granted in any suit instituted for that purpose by the same defendant against the same plaintiff or petitioner; and also all such relief relating to or connected with the original subject of the cause or matter, and in like manner claimed against any other person, whether already a party to the same cause or matter or not, who shall have been duly served with notice in writing of such claim pursuant to any Rule of Court or any Order of the Court, as might properly have been granted against such person if he had been made a defendant to a cause duly instituted by the same defendant for the like purpose; and every person served with any such notice shall thenceforth be deemed a party to such cause or matter, with the same rights in respect of his defence against such claim, as if he had been duly sued in the ordinary way by such defendant.

*Counter-claim.*—A counter-claim may be made against the plaintiff, or the plaintiff and another person; but no claim to any relief in which the plaintiff is not interested can be raised against a third person by way of counter-claim: *Treleaven v. Bray*, 45 L. J., Ch. 113. As to what may be raised by way of counter-claim, and as to the practice in the case of a counter-claim, see O. XIX., r. 3, *post*, p. 203, and O. XXI., rr. 11 to 17, *post*, pp. 219—221, and notes thereto.



*Third party procedure.*—See O. XVI. rr. 48 *et seq.*, *post*, pp. 188—193. As to the position of a third party, see *Eden v. Weardale Iron Co.*, 28 Ch. D. 333; 34 Ch. D. 223; 35 Ch. D. 287. Act 1873,  
s. 24, (3)—(5).

- (4.) The said Courts respectively, and every Judge thereof, shall recognize and take notice of all equitable estates, titles, and rights, and all equitable duties and liabilities appearing incidentally in the course of any cause or matter, in the same manner in which the Court of Chancery would have recognized and taken notice of the same in any suit or proceeding duly instituted therein before the passing of this Act. Equities  
appearing  
incidentally.

*Specific performance.*—See *Williams v. Snowden*, W. N. (1880), 124, where the Court gave effect to a right to specific performance of an undertaking to grant a lease which appeared incidentally, and was not claimed by the defendant in a counter-claim. In actions for specific performance the Court may now grant relief partly by way of specific performance, and partly by way of damages; it has a wider power, under the Judicature Acts, to grant damages than it formerly possessed under Cairns' Act (21 & 22 Vict. c. 27): *Elmore v. Pirrie*, 57 L. T. 333.

*Rectification of deed.*—Where it appears incidentally in a cause or matter that a party to it is entitled to have a deed rectified or set aside, the Court, for the purposes of the cause or matter, will treat the deed as rectified or set aside, though such relief was not expressly claimed by the party: *Mostyn v. West Mostyn Coal Co.*, 1 C. P. D. 145.

*Sale of shares subject to charging order.*—Where the plaintiff had obtained a charging order on certain shares of the defendant, it was held that the Court had no jurisdiction to order the sale of the shares, but that separate proceedings must be instituted: *Leggott v. Western*, 12 Q. B. D. 287.

*Agreement not to appeal.*—As to enforcing an agreement not to appeal, see *Jones v. Victoria Graving Dock Co.*, 2 Q. B. D. 314; *Re Hull and County Bank*, 13 Ch. D. 261.

*Compromise.*—As to enforcing a compromise, see *Eden v. Naish*, 7 Ch. D. 781; *Scully v. Lord Dundonald*, 8 Ch. D. 658; *Re Gaudet Co.*, 12 Ch. D. 882; *Davis v. Davis*, 13 Ch. D. 861.

*Wife's equity to a settlement.*—See *Heron v. Heron*, W. N. (1887), 158, cited under s. 25, subs. 11, *infra*.

- (5.) No cause or proceeding at any time pending in the High Court of Justice, or before the Court of Appeal, shall be restrained by prohibition or injunction; but every matter of equity on which an injunction against the prosecution of any such cause or proceeding might have been obtained, if this Act had not passed, either unconditionally or on any terms or conditions, may be relied on by way of defence thereto: Provided always, that nothing in this Act contained shall disable either of the said Courts from directing a stay of proceedings in any cause or matter pending before it if it shall think fit; and any person, whether a party or not to any such cause or matter, who would have been entitled, if this Act had not passed, to apply to any Court to restrain the prosecution thereof, or who may be entitled to enforce, by attachment or otherwise, any judgment, decree, rule, or order, contrary to which all or any part of the proceedings in such cause or matter may have been taken, shall be at liberty to apply to the said Courts respectively, by motion in a summary way, for a stay of proceedings in such cause or matter, either generally, or so far as may be necessary for Defence or  
stay instead of  
injunction or  
prohibition.

Act 1873,  
s. 24, (5).

the purposes of justice; and the Court shall thereupon make such order as shall be just.

**POWER OF HIGH COURT TO RESTRAIN PROCEEDINGS BEFORE OTHER TRIBUNALS.**—This sub-section does not affect the power of the High Court to restrain proceedings before other tribunals.

*Prohibition.*—When an ecclesiastical or other inferior Court has exceeded its jurisdiction, prohibition will issue as heretofore, even though an appeal lies to the Privy Council: *Martin v. Mackonochie*, 4 Q. B. D. 697, at p. 755; 6 App. Cas. 424; and when prohibition would lie, the same end can now, in certain cases, be obtained by injunction: *Hedley v. Bates*, 13 Ch. D. 498, as explained in *Stannard v. St. Giles*, 20 Ch. D. 190.

*Restraining arbitrator.*—The High Court can restrain an unfit person by injunction from acting as arbitrator: *Beddow v. Beddow*, 9 Ch. D. 89.

*Proceedings before foreign tribunal.*—As to restraining a party from proceeding before a foreign tribunal, see *Portarlington v. Souby*, 3 My. & K. 104; *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681.

**POWER OF OTHER COURTS TO RESTRAIN PROCEEDINGS IN HIGH COURT.**

*Bankruptcy.*—Under the Bankruptcy Act, 1883, a County Court in Bankruptcy has no power to restrain proceedings in the High Court: *Ex parte Reynolds*, 15 Q. B. D. 169.

*Chancery Court of Lancaster.*—This Court has no power to restrain or stay proceedings in the High Court: *Re Alison's Trusts*, 8 Ch. D. 1.

*County Court.*—A County Court in which an administration suit is pending cannot stay proceedings in the High Court in respect of claims provable in that suit: *Cobbold v. Pryke*, 4 Ex. D. 315.

**DIFFERENT DIVISIONS OF HIGH COURT.**—The main object of this sub-section is, that one Division of the High Court shall not interfere with another, but that the Court before which an action is pending should deal completely and finally with the whole matter in controversy between the parties. See *Garbutt v. Fawcus*, 1 Ch. D. 155. As to dealing completely with the whole subject, see *Salt v. Cooper*, 16 Ch. D. 544. Thus a Judge of the Chancery Division cannot restrain a sheriff from dealing with goods taken in execution under a *fi. fa.* to enforce a judgment of the Queen's Bench Division: *Wright v. Redgrave*, 11 Ch. D. 24; nor can he restrain proceedings to enforce an award in an action pending in another Division: *Powell v. Jewsbury*, 9 Ch. D. 34, at p. 39. Where a receiver, appointed in an action in the Queen's Bench Division, interfered with the rights of a mortgagee, who commenced an action in the Chancery Division for an injunction, it was held that the proper course was to apply in the action and to the Court in and by which the receiver was appointed: *Searle v. Choat*, 25 Ch. D. 723. See, too, *Crowle v. Russell*, 4 C. P. D. 186, where an order to stay an action by the mortgagee against the tenants of the mortgaged property pending an action to administer the estate of the mortgagor was discharged.

It has been held that a Judge in the Chancery Division may enforce specific performance of an agreement for a separation deed and for the compromise of a suit in the Divorce Court: *Hart v. Hart*, 18 Ch. D. 670.

*Winding-up proceedings.*—Before the winding-up order has been made, application to stay must be made where the action is pending: *Re People's Garden Co.*, 1 Ch. D. 44; *Re Morrison Co.*, W. N. (1877), 20; *Re Artistic Printing Co.*, 14 Ch. D. 502; *South of France Pottery Works*, 25 W. R. 870. The difficulty, which was felt as to jurisdiction under s. 85 of the Companies Act, 1862, has, as to an application after a winding-up order has been made, been removed by O. XLIX., r. 5, *post*, p. 370, which enables the Judge before whom the winding up is pending to transfer the action to himself, and thus obtain complete control over it. The rule does not apply to the case of a voluntary winding up under supervision: *Re Shingleton Ice Co.*, 31 Sol. J. 705.

*Prerogative of the Crown.*—This is not affected by this sub-section; therefore the Queen's Bench Division can still, on the application of the Attorney-General, restrain an action in the Chancery Division which involves questions affecting the revenue, and transfer the action to itself: *A.-G. v. Constable*, 4 Ex. D. 172. See further as to the prerogative of the Crown and the application of the rule that the Crown is not bound by a statute unless expressly referred to therein, *Re Benham*, 10 Ch. D. 595.

*Restraining institution of proceedings.*—Though one Division or Court cannot in



general stay pending proceedings in another, one Division or Court may still restrain the institution of proceedings in another: *Besant v. Wood*, 12 Ch. D. 605, at p. 630; *Cercle Restaurant Co. v. Lavery*, 18 Ch. D. 555.

Act 1873,  
s. 24, (5).

#### STAY OF PROCEEDINGS IN COURT BEFORE WHICH ACTION IS PENDING.

*Staying frivolous or vexatious action.*—See *Dawkins v. Prince Edward*, 1 Q. B. D. 499; *Edmunds v. A.-G.*, 26 W. R. 550; *Metropolitan Bank v. Pooley*, 10 App. Cas. 210; *Ackers v. Ackers*, W. N. (1884), 82. See further, as to frivolous or vexatious pleadings, O. XXV., r. 4, and notes thereto, *post*, p. 233. For form of order prohibiting further application without leave, where repeated frivolous applications had been made, see *Grepe v. Loam*, 37 Ch. D. 168.

*For non-payment of costs.*—See *Morton v. Palmer*, 9 Q. B. D. 89; *Re Youngs*, 31 Ch. D. 239; *Re Neal*, 31 Ch. D. 437; and *Re Wickham*, 35 Ch. D. 272. Proceedings will be stayed although the plaintiff is not suing in the same character, if the action is substantially for the same matter: *Martin v. E. Beauchamp*, 25 Ch. D. 12; *Peters v. Tilly*, 11 P. D. 145. See further, O. XXVI., r. 4, *post*, p. 236.

*Lis alibi pendens.*—See *McHenry v. Lewis*, 22 Ch. D. 397; *Peruvian Co. v. Bockwoldt*, 23 Ch. D. 225; *Hyman v. Helm*, 24 Ch. D. 531; *The Christiansborg*, 10 P. D. 141; *Mutrie v. Binney*, 35 Ch. D. 614.

Where a husband presented a petition in India for divorce, and, whilst the petition was pending, was served in England with a petition for restitution of conjugal rights, an application for stay of proceedings on the wife's petition until the suit in India had been determined was refused: *Thornton v. Thornton*, 11 P. D. 176.

*Second action for relief claimed in former action.*—See *Re Aird*, 26 W. R. 441.

*Where action instituted without authority.*—See *London and Blackwall Ry. Co. v. Cross*, 31 Ch. D. 354.

*Stay, pending security.*—See *Richards v. Howell*, W. N. (1883), 168 (security for damages). As to staying the taking of accounts, pending security for costs, see *Exchange and Hop Warehouses v. Ass. of Financiers*, 34 Ch. D. 195.

*Where agreement of compromise entered into.*—See *Eden v. Nuish*, 7 Ch. D. 781; *Re Gaudet Co.*, 12 Ch. D. 882; *Baker v. Blaker*, 55 L. T. 723.

*Stay of execution pending appeal.*—See *post*, p. 448.

*Test actions.*—See *post*, p. 372.

*Stay of cross action.*—See *Adamson v. Tuff*, 44 L. T. 420; *Thomson v. S. E. Ry.*, 9 Q. B. D. 320.

*Action by executor who has not obtained probate.*—See *Tarn v. Commercial Banking Co.*, 12 Q. B. D. 294.

*Suit for restitution of conjugal rights.*—The Court declined to stay proceedings on the ground that the suit contravened the terms of a separation deed: *Marshall v. Marshall*, 5 P. D. 19.

*Action against company in voluntary liquidation.*—See *Rose v. Gardden Co.*, 3 Q. B. D. 235. In *Bett v. Shingleton Ice Co.*, 31 Sol. J. 705, Kekewich, J., sitting as Vacation Judge, stayed proceedings on a judgment obtained in the Q. B. D. against a company in voluntary liquidation.

*Action against official liquidators in their personal capacity.*—See *Graham v. Edge*, 20 Q. B. D. 683.

*Where proceedings are an abuse of process of the Court.*—As to the inherent jurisdiction of the Court to stay proceedings in such cases, see *Metropolitan Bank v. Pooley*, 10 App. Cas. 210; *Willis v. E. Beauchamp*, 11 P. D. 59; *London and Blackwall Ry. Co. v. Cross*, 31 Ch. D. 354, at p. 371, per Fry, L. J.; *Blair v. Cordner*, 36 W. R. 64.

**PROCEDURE.**—The sub-section authorizes the application for stay of proceedings to be made by "motion in a summary way." This does not mean that the motion is to be made *ex parte*, though in a case of urgency it may be so made, and an interim stay ordered: *Blewitt v. Dowling*, W. N. (1875), 202; *Kevers v. Mitchell*, W. N. (1876), 53.

*Winding up cases.*—In these cases, under s. 85 of the Companies Act, 1862, the practice is to make the order absolute on an *ex parte* application: *Masbach v. Anderson & Co.*, 26 W. R. 100; *Everingham v. Family Beer Co.*, W. N. (1880), 99.



Act 1873,  
s. 24, (6), (7).

Common law  
and statutory  
rights and  
duties.

- (6.) Subject to the aforesaid provisions, for giving effect to equitable rights and other matters of equity in manner aforesaid, and to the other express provisions of this Act, the said Courts respectively, and every Judge thereof, shall recognize and give effect to all legal claims and demands, and all estates, titles, rights, duties, obligations, and liabilities existing by the Common Law or by any custom, or created by any Statute, in the same manner as the same would have been recognized and given effect to if this Act had not passed by any of the Courts whose jurisdiction is hereby transferred to the said High Court of Justice.

Alterations in procedure effected by the Act must be distinguished from alterations in substantive law; see *Kendall v. Hamilton*, 4 App. Cas. 504, at p. 516, per Lord Cairns.

Under this sub-section, and in the absence of consent to the contrary, a common law action tried in, or transferred to, another Division is to be determined on the same common law principles as would have been applied to it in the Queen's Bench Division: *The Gertrude*, 13 P. D. 105.

Determination  
of entire con-  
troversy.

- (7.) The High Court of Justice and the Court of Appeal respectively, in the exercise of the jurisdiction vested in them by this Act, in every cause or matter pending before them respectively, shall have power to grant, and shall grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter: so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided.

*Duty of Court under this sub-section.*—As to the general duty imposed by this sub-section to decide all matters in controversy, see *Tharp v. Macdonald*, 3 P. D. 76, at pp. 81, 82; *Hedley v. Bates*, 13 Ch. D. 498, at p. 501; *Dowdeswell v. Dowdeswell*, 9 Ch. D. 294. See in illustration, *Re Gaudet Co.*, 12 Ch. D. 882. The Court, however, may decline to decide questions relating to contingent interests which may never come into possession: *Kevan v. Crawford*, 6 Ch. D. 29.

*Equitable execution.*—Where a plaintiff had obtained final judgment, and the sheriff had returned that there were no lands or goods which he could seize, it was held that the Court had power to grant equitable execution against the defendant by appointing a receiver in the action, although no claim for a receiver was indorsed on the writ, and that a fresh action was unnecessary: *Salt v. Cooper*, 16 Ch. D. 544; *Smith v. Cowell*, 6 Q. B. D. 75.

Where a person has been prejudiced by the conduct of a receiver, he ought to make application for relief in the action in which the receiver was appointed, and not commence a fresh action against the receiver: *Searle v. Choat*, 25 Ch. D. 723.

*Foreclosure absolute.*—Where the plaintiff has obtained a judgment for foreclosure absolute, he cannot obtain an order for a receiver, even though the conveyance of the property has not been settled: *Wills v. Luff*, 38 Ch. D. 197.

*Execution of power.*—Where a will purports to be made under a power and the Court has all persons interested before it, the Court ought not only to decide on the existence of the power, but also whether it is well executed: *Tharp v. Macdonald*, 3 P. D. 76.

*Rectification and specific performance.*—The Court has jurisdiction to make an order for rectification and for specific performance of a written executory agreement where the Statute of Frauds is not a bar: *Olley v. Fisher*, 34 Ch. D. 367.

*Inquiry as to debts.*—Where in a creditors' action to administer an insolvent estate the plaintiff's solicitor bought up debts, it was held that the question

whether the solicitor was trustee for the creditors, could not be raised by the Chief Clerk's certificate in the absence of any direction on the subject in the order under which the certificate was made: *Re Tillet*, 32 Ch. D. 639.

Act 1873,  
ss. 24, 25,  
(1)–(6).

*Counter-claims.*—See O. XIX., r. 3, *post*, p. 203, and notes thereto. As to staying one of two cross-actions and substituting counter-claim, see *Thomson v. S. E. Ry.*, 9 Q. B. D. 320.

*Declaratory judgment.*—See O. XXV., r. 5, *post*, p. 234.

Sect. 25.

25. And whereas it is expedient to take occasion of the union of the several Courts whose jurisdiction is hereby transferred to the said High Court of Justice to amend and declare the law to be hereafter administered in England as to the matters next herein-after mentioned: Be it enacted as follows:

Rules of law  
upon certain  
points.

(1.) [*Administration of assets of insolvent estates.*]

This sub-section was repealed by s. 10 of the S. C. Jud. Act, 1875, *post*, p. 69, which is substituted for it. It never came into operation: *Sherwin v. Selkirk*, 12 Ch. D. 68. The substituted section includes winding-up, which the repealed sub-section left untouched.

- (2.) No claim of a cestui que trust against his trustee for any property held on an express trust, or in respect of any breach of such trust, shall be held to be barred by any Statute of Limitations.

Statutes of  
Limitation  
inapplicable to  
express trusts.

See 3 & 4 Will. IV. c. 27, s. 25; 37 & 38 Vict. c. 57, s. 10. An express trust bars the statute equally as to personalty and realty by virtue of this section: *Banner v. Berridge*, 18 Ch. D. 254. See too *Petre v. Petre*, 1 Drew. 371.

- (3.) An estate for life without impeachment of waste shall not confer or be deemed to have conferred upon the tenant for life any legal right to commit waste of the description known as equitable waste, unless an intention to confer such right shall expressly appear by the instrument creating such estate.

Equitable  
waste.

- (4.) There shall not, after the commencement of this Act, be any merger by operation of law only of any estate, the beneficial interest in which would not be deemed to be merged or extinguished in equity.

Merger.

*Merger in equity.*—See *Chambers v. Kingham*, 10 Ch. D. 743; *Hyde v. Warden*, 3 Ex. D. 72.

- (5.) A mortgagor entitled for the time being to the possession or receipt of the rents and profits of any land as to which no notice of his intention to take possession or to enter into the receipt of the rents and profits thereof shall have been given by the mortgagee, may sue for such possession, or for the recovery of such rents or profits, or to prevent or recover damages in respect of any trespass or other wrong relative thereto, in his own name only, unless the cause of action arises upon a lease or other contract made by him jointly with any other person.

Suits for pos-  
session of land  
by mortgagors.

See *Fairelough v. Marshall*, 4 Ex. D. 37.

- (6.) Any absolute assignment, by writing under the hand of the assignor (not purporting to be by way of charge only), of any debt or other legal chose in action, of which express notice in writing shall have been given to the debtor, trustee, or other person from whom the assignor would have been

Assignment  
of debts and  
choses in  
action.



Act 1873,  
s. 25, (6).

entitled to receive or claim such debt or chose in action, shall be, and be deemed to have been effectual in law (subject to all equities which would have been entitled to priority over the right of the assignee if this Act had not passed), to pass and transfer the legal right to such debt or chose in action from the date of such notice, and all legal and other remedies for the same, and the power to give a good discharge for the same, without the concurrence of the assignor: Provided always, that if the debtor, trustee, or other person liable in respect of such debt or chose in action shall have had notice that such assignment is disputed by the assignor, or any one claiming under him, or of any other opposing or conflicting claims to such debt or chose in action, he shall be entitled, if he think fit, to call upon the several persons making claim thereto to interplead concerning the same, or he may, if he think fit, pay the same into the High Court of Justice under and in conformity with the provisions of the Acts for the relief of trustees.

*Former practice.*—At common law a chose in action was not assignable, but in equity the assignment of a chose in action was considered as amounting to a declaration of trust and to an agreement to permit the assignee to use the name of the assignor in order to recover the debt or to reduce the property into possession. Story, Eq. Jur. § 1040. If the assignee sued in equity, he was obliged to make the assignor a party, either as defendant, or more usually as co-plaintiff; unless the thing assigned was a mere equitable right, in which case the assignee might sue alone: Dan. Pr., p. 205. If the assignee sued at law, he sued simply in the name of the assignor, but in that case he was bound to give, or at any rate to offer, the assignor a sufficient indemnity against costs; and where no Statute has interfered the old practice in this respect still remains unaltered: *Turquand v. Fearon*, 4 Q. B. D. 280.

*Policies of Assurance Act, 1867.*—By this Act (30 & 31 Vict. c. 144), the assignee of a life policy may sue on it in his own name. See *Curtius v. Caledonian Ins. Co.*, 19 Ch. D. 534.

*Policies of Marine Assurance Act, 1868.*—By this Act (31 & 32 Vict. c. 86), the assignee of a marine policy may sue on it in his own name. It has been held that a set-off against the assignor is not a "defence" within the meaning of this Act, which can be set up by the debtor when sued by the assignee: *Pellas v. Neptune Marine Ins. Co.*, 5 C. P. D. 34.

*Conveyancing and Law of Property Act, 1881.*—By s. 27 of this Act (44 & 45 Vict. c. 41), the transferee of a statutory mortgage may apparently sue on it in his own name.

*Absolute Assignment.*—An assignment of moneys not yet become due may be an absolute assignment: *Brice v. Bannister*, 3 Q. B. D. 569; *Buck v. Robson*, 3 Q. B. D. 687.

An assignment of debts to a creditor, the surplus to be paid to the assignor, is an absolute assignment: *Burlinson v. Hall*, 12 Q. B. D. 347.

The assignment of a mortgage by the mortgagee to his trustees, with a proviso for the re-assignment of the mortgage to him in a certain event, is not an absolute assignment: *National Provincial Bank v. Harle*, 6 Q. B. D. 626; see also *Re Sutton's Trusts*, 12 Ch. D. 175; *Southwell v. Scotter*, 49 L. J., Q. B. 356; *Knill v. Prowse*, 33 W. R. 163; *Walker v. Bradford Old Bank*, 12 Q. B. D. 511.

*Voluntary Assignment.*—See *Harding v. Harding*, 17 Q. B. D. 442.

*Equitable Assignment.*—See *Percival v. Dunn*, 29 Ch. D. 128; *Webb v. Smith*, 30 Ch. D. 192; *Gorringer v. Irwell Co.*, 34 Ch. D. 128; *Brown v. Kough*, 29 Ch. D. 848.

*Effect of sub-section.*—The sub-section relates to procedure, and does not make anything an assignment which was not an assignment before, either at law or in equity, as for instance a cheque: *Schroeder v. The Central Bank*, 24 W. R. 710; and see *Re Haycock's Policy*, 1 Ch. D. 611; *Ex p. Culley*, 9 Ch. D. 307; *Ex p. Theys*, 22 Ch. D. 122.



*Counterclaim by debtor.*—In *Young v. Kitchen*, 3 Ex. D. 127, the assignee of a chose in action sued the debtor. The debtor was allowed to counter-claim for breaches of contract by the assignor, in respect of the same transaction, but it was held that the amount of the counter-claim must be limited by the amount of the claim.

As to setting off a debt due from the assignor against the assignee, see *Roxburgh v. Cox*, 17 Ch. D. 520, at p. 526.

*Interpleader.*—Relief by interpleader may be had under this sub-section before action brought: see O. LVII., r. 1, and note thereto, *post*, p. 429.

If an interpleader order be made on a separate proceeding under this sub-section, the Judge making the order has no power to stay the proceedings in an action already commenced against the debtor: *Reading v. School Board for London*, 16 Q. B. D. 686.

*Payment into Court.*—See *Re Haycock's Policy*, 1 Ch. D. 611; *Re Sutton's Trusts*, 12 Ch. D. 175.

*Attachment of debts.*—The assignee of a judgment debt is entitled to attach debts due to the original debtor: *Goodman v. Robinson*, 18 Q. B. D. 332.

- (7.) Stipulations in contracts, as to time or otherwise, which would not, *before the passing of this Act*, have been deemed to be or to have become of the essence of such contracts in a Court of Equity, shall receive in all Courts the same construction and effect as they would have heretofore received in equity.

Stipulations not of the essence of contracts.

As to the equitable construction of stipulations in contracts as to time, see *Tilley v. Thomas*, 3 Ch. 61.

- (8.) A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just: and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.

Mandamus, injunctions, and receivers.

*General scope of sub-section.*—See *North London Ry. v. G. N. Ry.*, 11 Q. B. D. 30. The words “just or convenient” must be construed as if they were “just and convenient.” The power must be exercised, not arbitrarily, “but according to sufficient legal reasons, and on settled legal principles”: see the case above cited, and *Beddow v. Beddow*, 9 Ch. D. 89, at p. 93; *Day v. Brownrigg*, 10 Ch. D. 294, at p. 307; *Gaskin v. Balls*, 13 Ch. D. 324. Whatever relief can be granted by an interlocutory order, can, *a fortiori*, be granted by a final order at the trial: *Beddow v. Beddow*, 9 Ch. D. 89, at p. 93; *North London Ry. v. G. N. Ry.*, 11 Q. B. D. 30, at p. 39.

#### MANDAMUS.

*Effect of sub-section.*—The effect of this sub-section is, first, to give to the Court a very wide discretion as to the issue of the writ; and, secondly, to allow it to be issued upon an interlocutory application, instead of its necessarily being claimed upon the writ and by pleadings; without, in fact, an action of mandamus being brought within the meaning of the C. L. P. Act, and the Rules as to Mandamus. See *Reg. v. Bishop Wearmouth*, 5 Q. B. D. 67, at pp. 70 *et seq.*

By the Common Law Procedure Act, 1854, all the Common Law Courts were

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given a limited power of enforcing by mandamus the specific performance of legal duties. The mandamus referred to in the above sub-section is not the prerogative writ. It is the same as that referred to in O. LIII., Part I.: *Glossop v. Heston Local Board*, 12 Ch. D. 102, at p. 122.

*Duty must be of public nature.*—See *Benson v. Paull*, 6 E. & B. 273. But see *Norris v. Irish Land Co.*, 8 E. & B. 512.

*Remedy only available where no other effectual remedy.*—See *Bush v. Beavan*, 1 H. & C. 500.

*Mandamus to Improvement Commissioners.*—See *Ward v. Lowndes*, 1 E. & E. 940, 956 (to levy rate to satisfy plaintiff's claim); *Webb v. Commissioners of Herne Bay*, 5 Q. B. 642 (to apply funds in payment of debentures).

*Mandamus to Railway Company.*—See *Morgan v. Met. Ry. Co.*, L. R., 4 C. P. 97 (to give notice to treat and proceed with purchase of land); *Fotherby v. Met. Ry. Co.*, L. R., 2 C. P. 188; *Guest v. Poole Ry. Co.*, L. R., 5 C. P. 553 (to enforce issuing of warrant to sheriff to summon a jury to assess value of land taken).

*Discretion of Court where parties agree that mandamus may issue.*—See *Nicholl v. Allen*, 1 B. & S. 916, 934.

*Indorsing claim on writ.*—See *Colebourne v. Colebourne*, 1 Ch. D. 690; and O. II., r. 1, *post*, p. 129, and note thereto. For a form of indorsement, see App. A., Part III., Sect. IV., *post*, p. 540.

*Mode of Application.*—See O. L., r. 6, *post*, p. 374.

*Prerogative writ.*—The power of the Court of Queen's Bench, by the prerogative writ of mandamus, at the instance of persons interested, to enforce legal rights of a public nature, where no other adequate remedy exists, has been long exercised. See *Tapping on Mandamus*. The writ is a discretionary writ, and not a writ of right, and may therefore be refused in the discretion of the Court; but where granted it is upon the merits of the case, and not upon the Court's discretion, and therefore the granting of the writ is subject to appeal: *Reg. v. All Saints*, 1 App. Cas. 611. The jurisdiction by prerogative writ will not be exercised except by the Queen's Bench Division: *Glossop v. Heston Local Board*, 12 Ch. D. 102, at pp. 115, 122.

*Practice.*—See Crown Office Rules, 1886, rr. 60—79.

#### INJUNCTION.

**FORMER LAW.**—*Common Law Courts.*—The power of the Common Law Courts to grant injunctions in ordinary actions depended upon ss. 79 to 82 of the C. L. P. Act, 1854, as amended by ss. 32, 33, of the C. L. P. Act, 1860. Under those Acts the plaintiff could only ask for an injunction when a breach of contract or other injury had actually been committed; for he must (s. 79) be entitled to maintain and have brought an action. Power to grant injunctions in patent cases was given by the Patent Law Amendment Act, 1852 (15 & 16 Vict. c. 83), s. 42; but under that section, too, the injunction could only be issued when an action was pending, and therefore after a cause of action had arisen. That Statute has been repealed by the Patents, &c. Act, 1883; and by s. 32 of that Act, power to grant injunctions in patent cases is given and defined. By the Merchandise Marks Act (25 & 26 Vict. c. 88), s. 21, a power to grant injunctions was given as to trade marks.

*Court of Chancery.*—The Court of Chancery, in the exercise of its traditional jurisdiction, granted injunctions to restrain the commission of threatened wrongs, or the continuance or repetition of those already committed. But with regard to injunctions to restrain trespasses, somewhat refined distinctions were drawn as to the power to interfere—first, according as the person sought to be restrained was in possession or not; and secondly, if out of possession, according as he was a mere trespasser or acted under colour of right. These distinctions led to some uncertainty and inconvenience: see *Lowndes v. Bettie*, 33 L. J., Ch. 451; *Stanford v. Hurlstone*, 9 Ch. 116.

*Effect of sub-section.*—The above sub-section in express terms abolishes these distinctions, and moreover gives the High Court power to grant an injunction in all cases in which it appears just and convenient to do so. Whatever can be done under this sub-section, can, *à fortiori*, be done at the trial generally: *Beddow v. Beddow*, 9 Ch. D. 89, at p. 93; *North London Ry. v. G. N. Ry.*, 11 Q. B. D. 30, at p. 39. Even where a statute prohibits an act under a penalty, the ancillary remedy by injunction still remains, and the power given by this sub-



section may be regarded as a supplement to all Acts of Parliament: *Cooper v. Whittingham*, 15 Ch. D. 501.

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**INSTANCES OF EXERCISE OF THE POWER.**—Injunctions have been granted in the following cases:—

*Respondent in Divorce Suit.*—To restrain the respondent in a divorce suit after decree *nisi* from dealing with property which she claimed under a post-nuptial settlement: *Noakes v. Noakes*, 4 P. D. 60.

*Arbitrator.*—To restrain an arbitrator from acting as such, where in the opinion of the Court he was unfit or incompetent: *Beddow v. Beddow*, 9 Ch. D. 89; but see *North London Ry. v. G. N. Ry.*, 11 Q. B. D. 30, as to matters outside the agreement to refer.

*Distress.*—To restrain a landlord from distraining for rent pending the determination of an action to try his right thereto: *Shaw v. Earl of Jersey*, 4 C. P. D. 359.

*Proceedings in inferior Court.*—As a substitute for prohibition, to restrain proceedings in an inferior Court: *Hedley v. Bates*, 13 Ch. D. 498, as explained by *Stannard v. Vestry of St. Giles*, 20 Ch. D. 190.

*Municipal Corporation.*—To restrain a municipal corporation from declaring a corporate office void, and proceeding to elect thereto: *Aslatt v. Corporation of Southampton*, 16 Ch. D. 143.

*Winding-up of company.*—To restrain an alleged creditor of a solvent company from presenting a petition to wind it up, when the debt was disputed: *Cercle Restaurant Co. v. Latery*, 18 Ch. D. 555.

*Co-ownership action.*—To restrain the defendant in a co-ownership action concerning shares in a ship from dealing with the shares *pendente lite*: *The Horlock*, 36 L. T. 622.

*Libel.*—As to restraining the further publication of libels generally, see *Quartz Hill Co. v. Beall*, 20 Ch. D. 501, at p. 507; *Hill v. Hart Davies*, 21 Ch. D. 798. As to restraining publication of a trade libel, see *Saxby v. Easterbrook*, 3 C. P. D. 339; *Thorley's Cattle Feed Co. v. Massam*, 14 Ch. D. 763; *Thomas v. Williams*, 14 Ch. D. 864. Though, since the passing of the S. C. Jud. Acts, the Court has jurisdiction to restrain by interlocutory injunction the publication of a trade libel, the jurisdiction is to be exercised only in the clearest cases: *Liverpool Household Stores Association v. Smith*, 37 Ch. D. 170.

*Damnum absque injuriâ.*—The Court has no jurisdiction to grant an injunction where there is no legal injury done, but simply a matter of inconvenience: *Street v. Union Bank of Spain*, 30 Ch. D. 156.

*Husband and wife.*—An injunction will not be granted to restrain a married woman from parting with separate estate in respect of which she is being sued: *Robinson v. Pickering*, 16 Ch. D. 660. As to restraining a husband from interfering with his wife's property, see *Symonds v. Hallett*, 24 Ch. D. 346.

**MANDATORY INJUNCTIONS.**—These are still granted as before the Act: *Strelley v. Pearson*, 15 Ch. D. 113; *Mullins v. Howell*, 11 Ch. D. 763. As to the principles on which they are granted, see *Smith v. Smith*, 20 Eq. 500, at p. 504; *Gaskin v. Balls*, 13 Ch. D. 324. An injunction will not be granted where the proper remedy is the prerogative writ of mandamus: *Glossop v. Heston Local Board*, 12 Ch. D. 102; and *A.-G. v. Dorking*, 20 Ch. D. 595.

*Discretion of the Court.*—See *Doherty v. Allman*, 3 App. Cas. 709.

**PRACTICE.**—As to the mode of applying for the injunction, and the practice on granting it, see O. L., r. 6, *post*, p. 374, and notes thereto. See also O. L., r. 1 (A), as to disposing of the whole action upon an application for an injunction. As to what is sufficient notice of an injunction, and as to the consequences of disobedience to injunction, see *Ex parte Langley*, 13 Ch. D. 110.

*Costs of motion standing over to trial.*—See *Gosnell v. Bishop*, 38 Ch. D. 385, cited *post*, pp. 387, 496.

**LORD CAIRNS' ACT.**—This Act (21 & 22 Vict. c. 27), s. 2, which enabled the Court to give damages in addition to or in substitution for an injunction, was formally repealed by the Statute Law Revision Act, 1883 (46 & 47 Vict. c. 49), but the power of the High Court to exercise the jurisdiction conferred on the Court of Chancery by Lord Cairns' Act is not affected by the repeal: *Sayers v. Collyer*, 28 Ch. D. 103. For cases under the Act, see *Fritz v. Hobson*, 14 Ch. D. 542; *Bowen*



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*v. Hall*, 6 Q. B. D. 333; *Krehl v. Burrell*, 11 Ch. D. 146 (as to the limit of the power of the Court to substitute damages for an injunction).

**Assessment of damages.**—Damages may be given up to the date of judgment: *Fritz v. Hobson*, *ubi supra*, at p. 557; and O. XXXVI., r. 58, *post*, p. 307.

**Notice of action.**—The Public Health Act, 1875, entitles a local board to a month's notice of action for anything done under the Act. An action for an injunction may, nevertheless, be maintained without notice, where the case is such that a bill would, but for the Judicature Act, have been filed in Chancery for an injunction, although damages be claimed by way of subsidiary relief: *Flower v. Low Leyton Local Board*, 5 Ch. D. 347.

#### RECEIVERS.

**FORMER LAW.**—The Common Law Courts had no power to appoint receivers.

In Chancery the appointment of a receiver was a remedy in familiar use. The Court, however, would not appoint a receiver at the instance of a mortgagee having the legal estate, or other person able to obtain protection at law: *Berney v. Sewell*, 1 J. & W. 647; *Buzton v. Monkhouse*, G. Coop. 41; *Kelsey v. Kelsey*, 17 Eq. 495.

#### INSTANCES OF EXERCISE OF THE POWER:—

**On application of mortgagee.**—A legal mortgagee may now obtain the appointment of a receiver instead of taking the risk of entering on the property. Receivers were appointed in the following cases:—

At instance of a first mortgagee in a case in which the mortgagor was insolvent, and a receiving order under the Bankruptcy Act, 1883, had been made against him: *Easton v. Mercer*, 1885, *not reported*.

At instance of first mortgagee in possession of land on which there were two subsequent mortgages, notwithstanding that he had been paid all his interest and costs out of rents received whilst in possession: *Mason v. Westoby*, 32 Ch. D. 206.

Where the mortgagor of an hotel forcibly prevented the mortgagee from taking possession under the mortgage: *Truman v. Redgrave*, 18 Ch. D. 547.

In an action of foreclosure the Court will, upon the application of the mortgagee, appoint a receiver, notwithstanding that the mortgagee can appoint a receiver without application to the Court under the Conveyancing Act, 1881 (44 & 45 Vict. c. 41), s. 19: *Tillett v. Nixon*, 25 Ch. D. 238.

Where the plaintiff was mortgagee of property, as to some of which his title was legal, and as to some equitable, a receiver was appointed for the whole: *Pease v. Fletcher*, 1 Ch. D. 273.

**Where legal title to property in dispute.**—See *Berry v. Keen*, 51 L. J., Ch. 912. In ejectment, see *Gwatkin v. Bird*, 52 L. J., Q. B. 263.

**Interpleader proceedings.**—The appointment of a receiver may be ordered instead of a sale by the sheriff: *Howell v. Dawson*, 13 Q. B. D. 67.

**Where debtor out of jurisdiction.**—See *Re Coney*, 29 Ch. D. 993.

**In partition suit.**—See *Porter v. Lopes*, 7 Ch. D. 358.

**Before grant of probate.**—Any Judge of the High Court may before probate or administration appoint a receiver of a deceased's estate; but such applications are properly made to the Probate Division: *Re Parker*, 54 L. J., Ch. 694.

**In creditor's administration action.**—See *Re Radcliffe*, 7 Ch. D. 733; but see as to this case, *Phillips v. Jones*, 28 Sol. J. 360; *Re Harris*, 56 L. J., Ch. 754.

**In co-ownership suit.**—See *The Amphill*, 5 P. D. 224.

**EQUITABLE EXECUTION.**—It is unnecessary to commence a fresh action, as was done in *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275; or to sue out a writ of *elegit*, before applying under this sub-section for a receiver in order to obtain equitable execution. It is sufficient to make an affidavit of belief that the defendant has no legal estate: *Ex parte Evans*, 13 Ch. D. 252.

The Court has no jurisdiction to appoint a receiver on a petition under 27 & 28 Vict. c. 112, (Act to amend the law relating to future judgments, &c.): *Re Nixon*, W. N. (1886), 191.

As to the appointment of a receiver in order to recover costs from a married woman having separate estate, see *Bryant v. Bull*, 10 Ch. D. 153.

**MEANING OF INTERLOCUTORY ORDER.**—This means any order in a cause other than final judgment. It applies to orders made after, as well as before, judgment: *Smith v. Concell*, 6 Q. B. D. 75; therefore where the plaintiff has obtained judgment, and the defendant has no legal estate, but has some equitable estate or

interest, the plaintiff may obtain equitable execution by applying for a receiver in the original action: *ibid.*, and *Salt v. Cooper*, 16 Ch. D. 544.

As to receivers generally, see O. L., Part II. *post*, p. 379, and notes thereto.

As to the appointment of a receiver in cases of equitable execution, see notes to O. XLII., r. 28, and O. L., r. 15 A., *post*, pp. 347, 379.

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s. 25, (8)—(10).

- (9.) In any cause or proceeding for damages arising out of a collision between two ships, if both ships shall be found to have been in fault, the rules hitherto in force in the Court of Admiralty, so far as they have been at variance with the rules in force in the Courts of Common Law, shall prevail.

Damages by collisions at sea.

In the Admiralty Court the rule has been that where both parties are to blame they must share the loss equally: see cases collected in *Roscoe's Admiralty Practice*, p. 48; according to the Common Law doctrine in such case neither could recover.

*Variance*.—It will be observed that it is only in cases of collision between ships, and where there was a variance between the Common Law and Admiralty rules, that the Common Law rule is changed: *Chartered Bank v. Netherlands Co.*, 10 Q. B. D. 521. In all other cases it remains unaffected; see *The Bernina*, 12 P. D. 58, where it was held in an action brought in *personam* against the owners of one of two vessels, both of which were to blame for the collision, that actions under Lord Campbell's Act are not Admiralty actions, and are not affected by this sub-section. See, too, *The Orwell*, 13 P. D. 80.

- (10.) In questions relating to the custody and education of infants, the rules of Equity shall prevail.

#### CUSTODY OF INFANTS.

*Common Law rule*.—See *Re Andrews*, L. R., 8 Q. B. 153, at p. 158.

*Chancery rule*.—The Court of Chancery, whenever there was any trust property of which it would undertake the administration, and so make the infant a ward of Court, took a less rigid view of the rights of the father or guardian than was taken by the Courts of Law, and looked more to the interest of the infant. Either father or guardian may lose his right to the custody of the child, not only by immorality of a nature likely to contaminate the child, or ill usage, but also by allowing the child to be brought up in a religion other than his own, or under the control and influence of persons other than himself, for so long a time and under such circumstances that to allow him to reclaim the control of the child, and the direction of its education, would be detrimental to its interest: *Lyons v. Blenkin*, Jac. 245; *Hill v. Hill*, 10 W. R. 400; *Andrews v. Salt*, 8 Ch. 622. And see *Agar-Ellis v. Lascelles*, 10 Ch. D. 49; *Re Clarke*, 21 Ch. D. 817; *Re Agar-Ellis*, 24 Ch. D. 317; *Re Montagu*, 28 Ch. D. 82, as to the education of infants; and *Re Holt*, 16 Ch. D. 115; *Reg. v. Nash*, 10 Q. B. D. 454; *Re Taylor*, 4 Ch. D. 157; *Re Besant*, 11 Ch. D. 508; *Re Elderton*, 25 Ch. D. 220; *Re Ethel Brown*, 13 Q. B. D. 614; *Re Ultee*, 54 L. T. 286, as to the custody of infants. After the decease of the father, the general rule is that the Court or guardian must have regard to the religion and the wishes of the father in bringing up the child; but under special circumstances the Court of Chancery has, on like grounds, disregarded the express or presumed desire of the deceased father with regard to the education of his child: *Stourton v. Stourton*, 8 De G. M. & G. 760. See, as to the custody and education of infants, 2 Seton, pp. 750—753; Simpson on Infants; Custody of Infants Act, 1873 (36 & 37 Vict. c. 12). The words "custody or control" in s. 2 of the last-named Act comprise all the rights which a father has over his children, including that of directing their religious education: *Condon v. Vollum*, 57 L. T. 154.

*Application of sub-section*.—See *Re Goldsworthy*, 2 Q. B. D. 75; *Re Taylor*, 4 Ch. D. 157; *Besant v. Wood*, 12 Ch. D. 605; *Re Rowe*, 33 W. R. 79.

*Guardianship of Infants Act, 1886*.—This Act (49 & 50 Vict. c. 27), provides that on the death of the father the mother is to be guardian, either alone when no guardian has been appointed by the father, or jointly with any guardian appointed by the father. The Act also provides for the appointment of a guardian by the mother in certain cases. Under s. 5 of the Act, the Court has jurisdiction to order delivery of an infant to the custody of its mother without fixing any limit of age during which the infant should remain in such custody: *Re Witten*, W. N. (1887), 167. The right of a father to decide what religious education



**Act 1873,  
s. 25, (10), (11).**

Cases of  
conflict not  
enumerated.

his children shall receive has not been affected by the Act: *Re Scanlan*, 36 W. R. 842. For a case in which, under s. 7, a declaration was made that a father was unfit to have the custody of his children, see *Skinner v. Skinner*, 36 W. R. 912.

For the rules issued under the Act, see *post*, p. 517.

- (11.) Generally, in all matters not hereinbefore particularly mentioned, in which there is any conflict or variance between the rules of Equity and the rules of the Common Law with reference to the same matter, the rules of Equity shall prevail.

**Executors.**—Where assets have come into the possession of an executor, and have afterwards been lost to the estate, the equitable rule now prevails that an executor is only liable in case of wilful default: *Job v. Job*, 6 Ch. D. 562. As to the mode of charging such default, see *Mayer v. Murray*, 8 Ch. D. 424, at p. 426; *Re Symons*, 21 Ch. D. 757. So also the equitable rule now prevails that payment in full by an executor to a creditor is valid, although he had notice that an administration action had been commenced by another creditor, provided the payment be made before judgment: *Re Radcliffe*, 7 Ch. D. 733; *Re Harris*, 56 L. J., Ch. 754.

**Discovery.**—The equity rules as to the right to discovery now prevail: *Anderson v. Bank of British Columbia*, 2 Ch. D. 644, at pp. 654, 658; *Allhusen v. Labouchere*, 3 Q. B. D. 654, at p. 666; *Kearsley v. Phillips*, 10 Q. B. D. 36, at p. 41; but see *Parker v. Wells*, 18 Ch. D. 477, at p. 485.

**Partner.**—See *Kendall v. Hamilton*, 4 App. Cas. 504, as to the joint and several liabilities of partners in respect of contracts.

**Mortgagor and Mortgagee.**—See *Heath v. Pugh*, 6 Q. B. D. 345, at p. 362, as to rights of mortgagor and mortgagee.

**Agreement for a lease.**—As to the effect of an agreement for a lease, under which the tenant has entered into possession, see *Walsh v. Lonsdale*, 21 Ch. D. 9; *Coatsworth v. Johnson*, 55 L. J., Q. B. 220.

**Rescission of contracts.**—See *Redgrave v. Hurd*, 20 Ch. D. 1, at p. 12.

**Damages for false representations.**—This being purely a common law remedy, is still governed by the common law rule: *Smith v. Chadwick*, 20 Ch. D. 27, at p. 68.

**Delivery up of title deeds.**—A Court of Equity being bound to give legal relief, will order innocent persons to deliver up title deeds: *Manners v. Mew*, 29 Ch. D. 725.

**Wife's equity to a settlement.**—Where before the Act a married woman would have had no equity to a settlement out of property to which her husband had a legal title, she has no such equity since the Act: *Heron v. Heron*, W. N. (1887), 158.

**RULES OF PRACTICE.**—This sub-section applies only to substantive law: *La Grange v. McAndrew*, 4 Q. B. D. 210; *Dalrymple v. Leslie*, 8 Q. B. D. 5. By s. 21 of S. C. Jud. Act, 1875, *post*, p. 76, it is provided that where not inconsistent with the Act and Rules, the then existing practice and procedure are to remain in force. In cases not provided for under the Judicature Act where there was a variance between the practice of the Court of Chancery and the Common Law Courts, the rule of practice which appears most convenient is to be adopted: *Newbiggin-by-the-Sea Gas Co. v. Armstrong*, 13 Ch. D. 310; *Nurse v. Durnford*, 13 Ch. D. 764. In both these cases the common law rule was followed. See, too, O. LXXII., r. 2, *post*, p. 515. See also *Clarborough v. Toothill*, 17 Ch. D. 787 (where an order under 3 & 4 Will. IV. c. 42, s. 40, was made on summons in the Chancery Division to compel the attendance of a witness before an arbitrator); *Morris v. Freeman*, 3 P. D. 65 (where it was held that the Probate Division had power to condemn in costs the defendant, a married woman having general separate estate); *La Grange v. McAndrew*, 4 Q. B. D. 210 (where it was held, following the equity rule, that a Judge had a discretion to make an order dismissing an action for want of prosecution, though the defendant had not abandoned an order for security for costs). The Chancery Division will exercise the jurisdiction over solicitors conferred on it by s. 87, *infra*, according to the practice familiar to that Division, and will not grant a rule nisi: *Re Copp*, 32 W. R. 25. Where a receiver has been appointed, and questions have been referred to a Master of the Q. B. Div. to report, his report, by analogy to the practice in the Chancery Division in respect to the certificate of a Chief Clerk, is not final and conclusive, but can be inquired into by the Court: *Walmsley v. Mundy*, 13 Q. B. D. 807.



## PART III.

## SITTINGS AND DISTRIBUTION OF BUSINESS.

Act 1873,  
ss. 26—28.

## Sect. 26.

**26.** The division of the legal year into terms shall be abolished so far as relates to the administration of justice; and there shall no longer be terms applicable to any sitting or business of the High Court of Justice, or of the Court of Appeal, or of any Commissioners to whom any jurisdiction may be assigned under this Act; but in all other cases in which, under the law now existing the terms into which the legal year is divided are used as a measure for determining the time at or within which any act is required to be done, the same may continue to be referred to for the same or the like purpose, unless and until provision is otherwise made by any lawful authority. Subject to rules of Court, the High Court of Justice and the Court of Appeal, and the Judges thereof, respectively, or any such commissioners as aforesaid, shall have power to sit and act, at any time, and at any place, for the transaction of any part of the business of such Courts respectively, or of such Judges or commissioners, or for the discharge of any duty which by any Act of Parliament, or otherwise, is required to be discharged during or after term.

By O. LXIV., r. 14, *post*, p. 471, sittings are substituted for terms, with regard to applications to set aside awards.

*Rules as to sittings of the Court.*—See O. LXIII., *post*, p. 465.

*Jurisdiction on circuit.*—See ss. 29 and 37, *infra*, and notes thereto.

## Sect. 27.

Vacations.

**27.** Her Majesty in Council may from time to time, upon any report or recommendation of the Judges by whose advice Her Majesty is hereinafter authorized to make rules before the commencement of this Act, and after the commencement of this Act upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, with the consent of the Lord Chancellor, make, revoke, or modify, orders regulating the vacations to be observed by the High Court of Justice and the High Court of Appeal, and in the offices of the said Courts respectively; and any Order in Council made pursuant to this section shall, so long as it continues in force, be of the same effect as if it were contained in this Act; and rules of Court may be made for carrying the same into effect in the same manner as if such Order in Council were part of this Act. In the meantime, and subject thereto, the said vacations shall be fixed in the same manner, and by the same authority, as if this Act had not passed. This section shall come into operation immediately upon the passing of this Act.

*Vacations.*—See O. LXIII., rr. 2 and 3, *post*, p. 465.

Under this section the duration of the Long Vacation was altered in 1884.

*Councils of Judges.*—See s. 75, *infra*.

By s. 17 of S. C. Jud. Act, 1875, *post*, p. 74, the reference to Judges in this section is to be deemed to be to the Judges mentioned in that section.

## Sect. 28.

Sittings in  
vacation.

**28.** Provision shall be made by Rules of Court for the hearing, in London or Middlesex, during vacation by Judges of the High Court of Justice and the Court of Appeal respectively, of all such applications as may require to be immediately or promptly heard.

It is only under this section that applications are heard at all during vacation.

**Act 1873,  
ss. 28, 29.**

Under O. LXIII., rr. 11 and 13, *post*, pp. 466, 467, vacation Judges are appointed to hear such applications; and only those Judges, or such other Judges as may sit for them, under r. 12 of the same order, have jurisdiction in vacation: per Lush and Lopes, JJ., 24th Sept., 1877. The same learned Judges laid down the rule that applications for judgment under O. XIV. will be heard in vacation as urgent, if the right to the order accrues in vacation, but not if there was an opportunity to apply before vacation.

See s. 52, *infra*, as to interim orders during vacation by Judges of the Court of Appeal.

**Sect. 29.**

Jurisdiction  
of Judges of  
High Court on  
circuit.

**29.** Her Majesty, by commission of assize or by any other commission, either general or special, may assign to any Judge or Judges of the High Court of Justice or other persons usually named in commissions of assize, the duty of trying and determining within any place or district specially fixed for that purpose by such commission, any causes or matters, or any questions or issues of fact or of law, or partly of fact and partly of law, in any cause or matter depending in the said High Court, or the exercise of any civil or criminal jurisdiction capable of being exercised by the said High Court; and any commission so granted by Her Majesty shall be of the same validity as if it were enacted in the body of this Act; and any commissioner or commissioners appointed in pursuance of this section shall, when engaged in the exercise of any jurisdiction assigned to him or them in pursuance of this Act, be deemed to constitute a Court of the said High Court of Justice; and, subject to any restrictions or conditions imposed by rules of Court and to the power of transfer, any party to any cause or matter involving the trial of a question or issue of fact, or partly of fact and partly of law, may, with the leave of the Judge or Judges to whom or to whose division the cause or matter is assigned, require the question or issue to be tried and determined by a commissioner or commissioners as aforesaid, or at sittings to be held in Middlesex or London, as hereinafter in this Act mentioned, and such question or issue shall be tried and determined accordingly.

A cause or matter not involving any question or issue of fact may be tried and determined in like manner with the consent of all the parties thereto.

*Judges liable to go circuit.*—See s. 37, *infra*, as modified by s. 8 of S. C. Jud. Act, 1875, and s. 15 of App. Jur. Act, 1876.

*Circuits.*—By s. 93, *infra*, the existing circuits were left unaffected for the present, so far as this Act is concerned. S. 23 of S. C. Jud. Act, 1875, *post*, p. 77, gives power to the Queen in Council to alter the circuits of the Judges, and make the various changes necessary for that purpose. And Orders in Council, dated the 5th February, 1876, the 17th May, 1876, and the 26th June, 1884, were issued, which prescribed the circuit regulations. The Winter Assizes are now regulated by Order in Council dated the 10th August, 1888. By the Winter Assizes Acts, 1876 and 1877, counties may be, by Order in Council, united for the purpose of a winter assize, that is, an assize during Sept., Oct., Nov., Dec. or Jan.; and the jurisdiction of the Central Criminal Court may, during the same period, be extended. And similar provisions are now contained in the Spring Assizes Act, 1879. In pursuance, however, of recommendations by the Judges of the Supreme Court, the exercise of the powers of grouping counties for criminal assizes under the Winter Assizes Acts will be almost wholly discontinued. There will, with a few exceptions, be assizes in every county three times a year. The April Assizes will only take place in Lancashire and Yorkshire; and the Autumn Assizes will commence in the middle of November, so that all the Courts will be in session at the beginning of the Michaelmas sittings.



**30.** Subject to rules of Court, sittings for the trial by jury of causes and questions or issues of fact shall be held in Middlesex and London, and such sittings shall, so far as is reasonably practicable, and subject to vacations, be held continuously throughout the year by as many Judges as the business to be disposed of may render necessary. Any Judge of the High Court of Justice sitting for the trial of causes and issues in Middlesex or London, at any place heretofore accustomed, or to be hereafter determined by rules of Court, shall be deemed to constitute a Court of the said High Court of Justice.

**Act 1873,  
ss. 30, 31.**

**Sect. 30.**  
Sittings for  
trial by jury  
in London and  
Middlesex.

Sittings for London are now held at the Royal Courts of Justice instead of at the Guildhall.

**31.** For the more convenient despatch of business in the said High Court of Justice (but not so as to prevent any Judge from sitting whenever required in any Divisional Court, or for any Judge of a different Division from his own), there shall be in the said High Court five divisions, consisting of such number of Judges respectively as hereinafter mentioned. Such five divisions shall respectively include, immediately on the commencement of this Act, the several Judges following; (that is to say)—

**Sect. 31.**  
Divisions of  
the High Court  
of Justice.

(1.) One division shall consist of the following Judges; (that is to say)—The Lord Chancellor, who shall be President thereof, the Master of the Rolls, and the Vice-Chancellors of the Court of Chancery, or such of them as shall not be appointed ordinary Judges of the Court of Appeal:

(2.) One other division shall consist of the following Judges; (that is to say)—The Lord Chief Justice of England, who shall be President thereof, and such of the other Judges of the Court of Queen's Bench as shall not be appointed ordinary Judges of the Court of Appeal:

(3.) One other division shall consist of the following Judges; (that is to say)—The Lord Chief Justice of the Common Pleas, who shall be President thereof, and such of the other Judges of the Court of Common Pleas as shall not be appointed ordinary Judges of the Court of Appeal:

(4.) One other division shall consist of the following Judges; (that is to say)—The Lord Chief Baron of the Exchequer, who shall be President thereof, and such of the other Barons of the Court of Exchequer as shall not be appointed ordinary Judges of the Court of Appeal:

(5.) One other division shall consist of two Judges, who, immediately on the commencement of this Act, shall be the existing Judge of the Court of Probate and of the Court for Divorce and Matrimonial Causes and the existing Judge of the High Court of Admiralty, unless either of them is appointed an ordinary Judge to the Court of Appeal. The existing Judge of the Court of Probate shall (unless so appointed) be the President of the said division, and subject thereto the Senior Judge of the said division, according to the order of precedence under this Act, shall be President.

The said five divisions shall be called respectively the Chancery Division, the Queen's Bench Division, the Common Pleas Division, the Exchequer Division, and the Probate Divorce and Admiralty Division.



**Act 1873,**  
**ss. 31, 32.**

*Any deficiency of the number of five Judges for constituting, in manner aforesaid, immediately on the commencement of this Act, any one or more of the Queen's Bench, Common Pleas, and Exchequer Divisions, may be supplied by the appointment, under Her Majesty's Royal Sign Manual, either before or after the time fixed for the commencement of this Act, of one of the Puisne Justices or Junior Barons of any superior Court of Common Law from which no Judge may be so appointed as aforesaid to the Court of Appeal, to be Judge of any division in which such deficiency would otherwise exist. And any deficiency of the number of three Vice-Chancellors, or of the two Judges of the Probate and Admiralty Divisions, at the time of the commencement of this Act, may be supplied by the appointment of a new Judge in his place, in the same manner as if a vacancy in such office had occurred after the commencement of this Act.*

Any Judge of any of the said divisions may be transferred by Her Majesty, under Her Royal Sign Manual, from one to another of the said divisions.

Upon any vacancy happening among the Judges of the said High Court, the Judge appointed to fill such vacancy shall, subject to the provisions of this Act, and to any Rules of Court which may be made pursuant thereto, become a member of the same division to which the Judge whose place has become vacant belonged.

In 1883, North, J., was transferred under the Royal Sign Manual from the Queen's Bench to the Chancery Division.

#### **Sect. 32.**

Power to alter divisions and abolish certain offices by Order in Council.

**32.** Her Majesty in Council may from time to time, upon any report or recommendation of the Council of Judges of the Supreme Court hereinafter mentioned, order that any reduction or increase in the number of divisions of the High Court of Justice, or in the number of the Judges of the said High Court who may be attached to any such division, may, pursuant to such report or recommendation, be carried into effect; and may give all such further directions as may be necessary or proper for that purpose; and such order may provide for the abolition on vacancy of the distinction of the offices of any of the following Judges, namely, the Chief Justice of England, the Master of the Rolls, the Chief Justice of the Common Pleas, and the Chief Baron of the Exchequer, which may be reduced, and of the salaries, pensions, and patronage attached to such offices, from the offices of the other Judges of the High Court of Justice, notwithstanding anything in this Act relating to the continuance of such offices, salaries, pensions, and patronage; but no such Order of Her Majesty in Council shall come into operation until the same shall have been laid before each House of Parliament for thirty days on which that House shall have sat, nor if, within such period of thirty days, an address is presented to Her Majesty by either House of Parliament, praying that the same may not come into operation. Any such Order, in respect whereof no such address shall have been presented to Her Majesty, shall, from and after the expiration of such period of thirty days, be of the same force and effect as if it had been herein expressly enacted; provided always, that the total number of the Judges of the Supreme Court shall not be reduced or increased by any such Order.

As to Councils of Judges, see s. 75, *infra*.

*Merger of Common Pleas and Exchequer Divisions in Queen's Bench.*—Pursuant to the powers given by this section, on the 16th of December, 1880, an Order in Council was made abolishing the offices of Chief Justice of the Common Pleas and Chief Baron of the Exchequer, and substituting ordinary Judges for them, and consolidating the three Common Law Divisions into one Division, to be called the Queen's Bench Division.

The S. C. Jud. Act, 1881, *post*, pp. 107 *et seq.*, makes further provision for carrying out the objects of this Order in Council.

**33.** All causes and matters which may be commenced in, or which shall be transferred by this Act to, the High Court of Justice, shall be distributed among the several divisions and Judges of the said High Court, in such manner as may from time to time be determined by any Rules of Court, or orders of transfer, to be made under the authority of this Act: and in the meantime, and subject thereto, all such causes and matters shall be assigned to the said divisions respectively, in the manner hereinafter provided. Every document by which any cause or matter may be commenced in the said High Court shall be marked with the name of the division, or with the name of the Judge, to which or to whom the same is assigned.

*Distribution of business among the several Divisions.*—See s. 34, *infra*; s. 11 of S. C. Jud. Act, 1875, *post*, p. 72; and O. V., Part II., *post*, p. 137, and notes thereto.

*Transfer of actions.*—See s. 34, *infra*; s. 11, sub-s. 2, of S. C. Jud. Act, 1875, *post*, p. 72; and O. XLIX., rr. 1—4, *post*, pp. 367—369, and notes thereto.

*Marking with name of Division.*—See s. 11 of S. C. Jud. Act, 1875, *post*, p. 72, and O. V., Part II., *post*, p. 137.

*Marking with name of Judge in Chancery Division.*—See s. 42, *infra*, and note thereto; and O. V., r. 9, *post*, p. 138.

*Assignment of actions to Masters in Q. B. D.*—See O. V., r. 6, *post*, p. 138.

**34.** There shall be assigned (subject as aforesaid) to the Chancery Division of the said Court:

- (1.) All causes and matters pending in the Court of Chancery at the commencement of this Act:
- (2.) All causes and matters to be commenced after the commencement of this Act, under any Act of Parliament, by which exclusive jurisdiction in respect to such causes or matters has been given to the Court of Chancery, or to any Judges or Judge thereof respectively, except appeals from County Courts:

*Order for delivery of Bill of Costs for business not transacted in Court.*—A Judge of the Q. B. D. has jurisdiction to order delivery of a solicitor's bill of costs where no part of the business has been transacted in any Court; for the jurisdiction conferred on the Lord Chancellor and Master of the Rolls by the Solicitors' Act, 1843 (6 & 7 Vict. c. 73), s. 37, has been transferred. By virtue of this sub-section, however, the jurisdiction has been assigned to the Chancery Division, to which Division such application should be made: *Re Pollard*, 20 Q. B. D. 656.

- (3.) All causes or matters for any of the following purposes:
  - The administration of the estates of deceased persons;
  - The dissolution of partnerships or the taking of partnership or other accounts;
  - The redemption or foreclosure of mortgages;
  - The raising of portions, or other charges on land;
  - The sale and distribution of the proceeds of property subject to any lien or charge;

**Act 1873,  
ss. 32—34.**

**Sect. 33.**

Rules of Court to provide for distribution of business.

**Sect. 34.**

Assignment of certain business to particular Divisions of High Court, subject to rules.



Act 1873,  
s. 34.

The execution of trusts, charitable or private;  
The rectification, or setting aside, or cancellation of deeds or other written instruments;  
The specific performance of contracts between vendors and purchasers of real estates, including contracts for leases;  
The partition or sale of real estates;  
The wardship of infants and the care of infants' estates.

*Construction of this sub-section.*—See *Rogers v. Jones*, 7 Ch. D. 345, at p. 349.

*Appeals from County Courts.*—See note to s. 45, *infra*.

*Conveyancing Act, 1881.*—By s. 69 of this Act, matters arising under the Act are assigned to the Chancery Division.

*Settled Land Act, 1882.*—By s. 46 of this Act, matters arising under the Act are assigned to the Chancery Division.

*Forms of pleadings.*—See App. C. to Rules, Sect. II., *post*, p. 553.

Matters  
assigned to  
particular  
Divisions.

There shall be assigned (subject as aforesaid) to the Queen's Bench Division of the said Court:

- (1.) All causes and matters, civil and criminal, pending in the Court of Queen's Bench at the commencement of this Act:
- (2.) All causes and matters, civil and criminal, which would have been within the exclusive cognizance of the Court of Queen's Bench in the exercise of its original jurisdiction if this Act had not passed.

*Crown side of Q. B. D., and criminal matters.*—See O. LXVIII., *post*, p. 509, and Crown Office Rules, 1886.

There shall be assigned (subject as aforesaid) to the Common Pleas Division of the said Court:

- (1.) All causes and matters pending in the Court of Common Pleas at Westminster, the Court of Common Pleas at Lancaster, and the Court of Pleas at Durham, respectively, at the commencement of this Act:
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Common Pleas at Westminster, if this Act had not passed.

There shall be assigned (subject as aforesaid) to the Exchequer Division of the said Court:

- (1.) All causes and matters pending in the Court of Exchequer at the commencement of this Act:
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Exchequer, either as a Court of Revenue or as a Common Law Court, if this Act had not passed.

The Common Pleas and Exchequer Divisions have now been merged in the Queen's Bench Division: see s. 32, *supra*, and note thereto; so that where the term "Common Pleas Division" or "Exchequer Division" occurs in any Act or rule, it must now be read as if it was "Queen's Bench Division."

*Revenue side of Q. B. D.*—See O. LXVIII., *post*, p. 509.

*Taxes Management Act, 1880.*—By s. 10 of this Act (43 & 44 Vict. c. 19), which regulates the collection of the Land Tax, Inhabited House Duty, Property Tax and Income Tax, "all matters within the jurisdiction of the High Court under this Act shall be assigned in England, subject to the Acts regulating the High Court, to the Exchequer (*now the Q. B.*) Division of Her Majesty's High Court of Justice in England." See further ss. 59, 107, 111, of that Act, which give the jurisdiction above referred to.

- [ (3.) *All matters pending in the London Court of Bankruptcy at the commencement of this Act;*



- (4.) *All matters to be commenced after the commencement of this Act under any Act of Parliament by which exclusive jurisdiction in respect of such matters has been given to the London Court of Bankruptcy.]*

Act 1873,  
ss. 34—37.

Matters  
assigned to  
particular  
Divisions.

This was repealed so far as relates to bankruptcy by S. C. Jud. Act, 1875. The jurisdiction of the London Bankruptcy Court has now been transferred to the High Court; see s. 93 of the Bankruptcy Act, 1883.

There shall be assigned (subject as aforesaid) to the Probate Divorce and Admiralty Division of the said High Court:

- (1.) All causes and matters pending in the Court of Probate, or in the Court of Divorce and Matrimonial Causes, or in the High Court of Admiralty, at the commencement of this Act:
- (2.) All causes and matters which would have been within the exclusive cognizance of the Court of Probate, or the Court for Divorce and Matrimonial Causes, or of the High Court of Admiralty, if this Act had not passed.

S. 11, sub-s. 3 of S. C. Jud. Act, 1875, *post*, p. 72, supplements this subsection by providing that a plaintiff shall not assign any cause or matter to this Division which he could not formerly have commenced in the Probate, Divorce, or Admiralty Courts.

*County Court Appeals in Admiralty matters.*—See *The Two Brothers*, 1 P. D. 52; see also ss. 42 and 45, *infra*, and note to the latter section; and O. LIX., r. 4, *post*, p. 451.

*Forms of pleadings.*—See App. C., Sect. III., *post*, p. 558, and, as to the use of such forms, see *The Isis*, 8 P. D. 227.

**35.** [*Option for any plaintiff (subject to rules) to choose in what division he will sue.*]

Sect. 35.

This section is repealed by S. C. Jud. Act, 1875, s. 33, and s. 11 of that Act substituted therefor.

**36.** Any cause or matter may at any time, and at any stage thereof, and either with or without application from any of the parties thereto, be transferred by such authority and in such manner as Rules of Court may direct, from one Division or Judge of the High Court of Justice to any other Division or Judge thereof, or may by the like authority be retained in the Division in which the same was commenced, although such may not be the proper Division to which the same cause or matter ought, in the first instance, to have been assigned.

Sect. 36.  
Power of  
transfer.

*Rules as to transfer of causes.*—See O. XLIX., rr. 1—4, *post*, pp. 367—369, and notes thereto: also s. 11 of S. C. Jud. Act, 1875, *post*, p. 72.

**37.** Subject to any arrangements which may be from time to time made by mutual agreement between the Judges of the said High Court, the sittings for trials by jury in London and Middlesex, and the sittings of Judges of the said High Court under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, shall be held by or before Judges of the Queen's Bench, *Common Pleas*, or *Exchequer Division of the said High Court*: Provided, that it shall be lawful for Her Majesty, if she shall think fit, to include in any such commission any ordinary Judge of the Court of Appeal or any Judge of the Chancery Division to be appointed after the commencement of this Act, or any serjeant-at-law, or any of Her Majesty's counsel learned in the law, who, for the purposes of such commission, shall

Sect. 37.

Sittings in  
London and  
Middlesex, and  
on circuits.

Commis-  
sioners.

**Act 1873,**  
**ss. 37—39.**

have all the power, authority, and jurisdiction of a Judge of the said High Court.

By s. 8 of S. C. Jud. Act, 1875, *post*, p. 68, any Judge of the Probate Divorce and Admiralty Division appointed after the passing of that Act is bound to go circuit, and to take part in the London and Middlesex sittings for trials by jury.

By s. 15 of App. Jur. Act, 1876, *post*, p. 87, the additional ordinary Judges of the Court of Appeal appointed under that Act are, subject to certain specified conditions, under an obligation to go circuit, and to act as commissioners under Commissions of Assize or other commissions issued in pursuance of S. C. Jud. Act, 1873.

For the present only Judges of the Q. B. D. are included in the Commissions of Assize. The intention of s. 7 of S. C. Jud. Act, 1884, appears to be to enable County Court Judges to be named as Commissioners of Assize.

**Sect. 38.**

**38.** [*Rota of Judges for election petitions.*]

This section was superseded by the 13th section of S. C. Jud. Act, 1881, and was formally repealed by the S. L. Revision Act, 1883.

**Sect. 39.**

Powers of one or more Judges not constituting a Divisional Court.

**39.** Any Judge of the said High Court of Justice may, subject to any Rules of Court, exercise in Court or in chambers all or any part of the jurisdiction by this Act vested in the said High Court, in all such causes and matters, and in all such proceedings in any causes or matters, as before the passing of this Act might have been heard in Court or in chambers respectively, by a single Judge of any of the Courts whose jurisdiction is hereby transferred to the said High Court, or as may be directed or authorized to be so heard by any Rules of Court to be hereafter made. In all such cases, any Judge sitting in Court shall be deemed to constitute a Court.

**JURISDICTION OF HIGH COURT NOW EXERCISED.**—By s. 16, *supra*, all the jurisdiction of any of the Courts enumerated in that section is transferred to the High Court, including (subject to the exceptions there referred to) all jurisdiction vested in, or capable of being exercised by, all or any one or more of the Judges of such Courts sitting in Court or chambers, or elsewhere.

S. 39 and the following sections, modified by App. Jur. Act, 1876, s. 17, and the Rules made thereunder, provide for the modes in which the Judges of the High Court may exercise the jurisdiction transferred.

Three modes are provided:—

- I. By a Judge in Chambers.
- II. By a Judge in Court.
- III. By a Divisional Court.

*Judge in chambers.*—By the above section any jurisdiction which could formerly have been exercised at chambers by a single Judge of any Court may be exercised by any Judge.

In the many cases in which jurisdiction is given to the Court or a Judge, the application should be at chambers where that is in accordance with the ordinary practice of the Division: see *Clover v. Adams*, 6 Q. B. D. 622; *Baker v. Oakes*, 2 Q. B. D. 171.

*Writ of attachment.*—May be issued by Judge in chambers: *Salm Kyrburg v. Posnanski*, 13 Q. B. D. 218.

*Writ of prohibition.*—A writ of prohibition issuing out of the Petty Bag Office may be set aside by a Judge at chambers: *Amstell v. Lesser*, 16 Q. B. D. 187.

*Appeals from chambers.*—See s. 50, *infra*.

*Practice at chambers.*—See O. LIV. and O. LV., *post*, pp. 394, 400.

*Single Judge in Court.*—By the above section all jurisdiction which might formerly have been exercised in Court by a Judge of any Court may be exercised by any Judge. By s. 42, *infra*, actions in the Chancery, or in the Probate Divorce and Admiralty Division are to be heard, as heretofore, by a single Judge in the first instance. By ss. 29 and 30, *supra*, a commissioner of assize or a Judge presiding at a trial by jury in London or Middlesex constitutes a Court. The App. Jur. Act, 1876, s. 17, *post*, p. 89, enacts, broadly, that every action



and proceeding, and all business arising out of them, except as provided by Rules, must be disposed of before a single Judge.

Act 1873,  
ss. 39—41.

*Divisional Courts.*—The constitution of Divisional Courts is now provided for by s. 17 of App. Jur. Act, 1876, *post*, p. 89, and the holding of them for the various divisions by ss. 41, 43, 44 of S. C. Jud. Act, 1873, *infra*.

O. LIX., *post*, p. 449, determines what matters are to be disposed of by Divisional Courts. By s. 45, *infra*, appeals from inferior Courts are to be heard by Divisional Courts.

**Sect. 40.**

**40.** Such causes and matters as are not proper to be heard by a single Judge shall be heard by Divisional Courts of the said High Court of Justice, which shall for that purpose exercise all or any part of the jurisdiction of the said High Court. Any number of such Divisional Courts may sit at the same time. *A Divisional Court of the said High Court of Justice shall be constituted by two or three, and no more, of the Judges thereof; and, except when through pressure of business or any other cause it may not conveniently be found practicable, shall be composed of three such Judges.* Every Judge of the said High Court shall be qualified and empowered to sit in any of such Divisional Courts. The President of every such Divisional Court of the High Court of Justice shall be the senior Judge of those present, according to the order of their precedence under this Act.

Divisional  
Courts of the  
High Court of  
Justice.

This section, so far as it is inconsistent with s. 17 of App. Jur. Act, 1876, *post*, p. 89, was repealed by the latter section, and s. 4 of S. C. Jud. Act, 1884, provides for the number of Judges who may constitute a Divisional Court. S. 17 of App. Jur. Act, 1876, and O. LIX., made under it, *post*, p. 449, define what matters are to be heard by Divisional Courts. The number of Judges who are to constitute a Divisional Court is now practically a matter to be determined by the President of the Division with the concurrence of two Judges of the Division.

**Sect. 41.**

**41.** Subject to any Rules of Court, and in the meantime until such Rules shall be made, all business belonging to the Queen's Bench, Common Pleas, and Exchequer Divisions respectively of the said High Court, which, according to the practice now existing in the Superior Courts of Common Law, would have been proper to be transacted or disposed of by the Court sitting in Banc, if this Act had not passed, may be transacted and disposed of by Divisional Courts, which shall, as far as may be found practicable and convenient, include one or more Judge or Judges attached to the particular Division of the said Court to which the cause or matter out of which such business arises has been assigned; and it shall be the duty of every Judge of such last-mentioned Division, and also of every other Judge of the High Court who shall not for the time being be occupied in the transaction of any business specially assigned to him, or in the business of any other Divisional Court, to take part, if required, in the sittings of such Divisional Courts as may from time to time be necessary for the transaction of the business assigned to the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively: and all such arrangements as may be necessary or proper for that purpose, or for constituting or holding any Divisional Courts of the said High Court of Justice for any other purpose authorized by this Act, and also for the proper transaction of that part of the business of the said Queen's Bench, Common Pleas, and Exchequer Divisions respectively, which ought to be transacted by one or more Judges not sitting in a Divisional Court, shall be made from time to time under the direction and superintendence of the Judges of the said High Court; and in case

Divisional  
Courts for  
business of  
Queen's  
Bench, Com-  
mon Pleas, and  
Exchequer  
Divisions.



**Act 1873,  
ss. 41—45.**

of difference among them, in such manner as a majority of the said Judges, with the concurrence of the Lord Chief Justice of England, shall determine.

This section, so far as it is inconsistent with s. 17 of App. Jur. Act, 1876, *post*, p. 89, was repealed by the latter section. That section, and the rules made under it, *post*, p. 449, define what matters are to be taken before Divisional Courts.

**Sect. 42.**

Distribution of business among the Judges of the Chancery and Probate Divorce and Admiralty Divisions of the High Court.

**42.** *Subject to any Rules of Court, and in the meantime until such rules shall be made, all business arising out of any cause or matter assigned to the Chancery, or Probate Divorce and Admiralty Division of the said High Court shall be transacted and disposed of in the first instance by one Judge only, as has been heretofore accustomed in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively; and every cause or matter which, at the commencement of this Act, may be depending in the Court of Chancery, the Court of Probate and for Divorce and Matrimonial Causes, and the High Court of Admiralty respectively, shall (subject to the power of transfer) be assigned to the same Judge in or to whose Court the same may have been depending or attached at the commencement of this Act; and every cause or matter which after the commencement of this Act may be commenced in the Chancery Division of the said High Court shall be assigned to one of the Judges thereof, by marking the same with the name of such of the said Judges as the plaintiff or petitioner (subject to the power of transfer) may in his option think fit: Provided that (subject to any Rules of Court, and to the power of transfer, and to the provisions of this Act as to trial of questions or issues by commissioners, or in Middlesex or London) all causes and matters which, if this Act had not passed, would have been within the exclusive cognizance of the High Court of Admiralty, shall be assigned to the present Judge of the said Admiralty Court during his continuance in office as a Judge of the High Court.*

The portion in italics was repealed by the S. L. R. Act, 1883.

S. 17 of App. Jur. Act, 1876, *post*, p. 89, repeals this section so far as it is inconsistent with it; but there does not appear to be any such inconsistency.

**Sect. 43.**

**43.** *[Divisional Courts for business of the Chancery Division.]*

This section was repealed by the S. L. R. Act, 1883.

**Sect. 44.**

Divisional Courts for business belonging to the Probate Divorce and Admiralty Division.

**44.** *Divisional Courts may be held for the transaction of any part of the business assigned to the Probate Divorce and Admiralty Division of the said High Court, which the Judges of such division, with the concurrence of the President of the said High Court, deem proper to be heard by a Divisional Court. Any cause or matter assigned to the said Probate Divorce and Admiralty Division may be heard at the request of the President of such Division, with the concurrence of the President of the said High Court, by any other Judge of the said High Court.*

The portion in italics was repealed by the S. L. R. Act, 1883.

The jurisdiction of the Full Court of Divorce was not touched by the S. C. Jud. Act, 1873, but now by s. 9 of S. C. Jud. Act, 1881, *post*, p. 106, Divorce appeals go to the Court of Appeal.

As to new trials in Divorce cases, see O. XXXIX., *post*, p. 328.

**Sect. 45.**

Appeals from Inferior Courts to be determined by

**45.** All appeals from Petty or Quarter Sessions, from a County Court, or from any other inferior Court, which might before the passing of this Act have been brought to any Court or Judge whose jurisdiction is by this Act transferred to the High Court of Justice,

may be heard and determined by Divisional Courts of the said High Court of Justice, consisting respectively of such of the Judges thereof as may from time to time be assigned for that purpose, pursuant to Rules of Court, or (subject to Rules of Court) as may be so assigned according to arrangements made for the purpose by the Judges of the said High Court. The determination of such appeals respectively by such Divisional Courts shall be final unless special leave to appeal from the same to the Court of Appeal shall be given by the Divisional Court by which any such appeal from an inferior Court shall have been heard.

Act 1873,  
s. 45.

Divisional  
Courts.

**COUNTY COURT APPEALS.**—Under s. 6 of the County Courts Act, 1875, it was held that an appeal from the judgment of a County Court might be by motion within eight days for a rule *nisi* to reverse the judgment, to be made to a Divisional Court, or a Judge at Chambers: see *Brown v. Shaw*, 1 Ex. D. 425. It was also held that an application for a new trial in a County Court action must still be by rule *nisi* notwithstanding O. XXXIX., which abolished rules *nisi* in High Court actions: *Matthews v. Ovey*, 13 Q. B. D. 403. But see now O. LIX., r. 10, by which rules *nisi* in these matters are abolished.

There is nothing in s. 6 of the County Courts Act, 1875, which takes away the power of the Appellate Court to order judgment to be entered in accordance with the power given by 13 & 14 Vict. c. 61, s. 14 (County Courts Act, 1850): *Whitman v. Hawkins*, 4 C. P. D. 13; see, too, O. LIX., r. 7, *post*, p. 452.

By O. LIX., r. 1 (c), *post*, p. 450, County Court appeals under s. 6 of the County Courts Act, 1875, go to a Divisional Court. O. LIX., rr. 9—17 (introduced in December, 1885), abolished the procedure by rule *nisi*, and substituted one uniform procedure by notice of motion. An appeal cannot now be brought by special case as provided by s. 14 of the County Courts Act, 1850: *Reg. v. Kettle*, 17 Q. B. D. 761.

**Appeals from interlocutory Orders.**—No appeal lies under s. 14 of the County Courts Act, 1850 (13 & 14 Vict. c. 61), from an interlocutory order of a County Court in a common law action: *Carr v. Stringer*, E. B. & E. 123. But an appeal lies under s. 18 of the County Courts Equitable Jurisdiction Act, 1865 (28 & 29 Vict. c. 99), from an interlocutory order of a County Court in a proceeding within its equitable jurisdiction: *Jonas v. Long*, 20 Q. B. D. 564. As no appeal lies from an interlocutory order made by a County Court Judge, if an order thus made is in excess of the jurisdiction of the Judge, the proper remedy is by prohibition: *Reg. v. Judge of Lincolnshire County Court*, 20 Q. B. D. 167.

**Determination of County Court.**—An appeal from a County Court will not be entertained unless there has been an actual “determination” by the County Court within 13 & 14 Vict. c. 61, s. 14. Judgment entered *pro forma* by the County Court Judge is insufficient: *Chapman v. Withers*, 58 L. T. 24.

**Interpleader.**—An appeal does not lie, even by leave of the County Court Judge, from the decision of a County Court in interpleader, where neither the money claimed, nor the value of the goods and chattels claimed, or of the proceeds, exceeds 20*l.*, for such a proceeding is not an action within 30 & 31 Vict. c. 142, s. 13: *Collis v. Lewis*, 20 Q. B. D. 202.

**Time for appealing.**—See O. LIX., rr. 12 and 16, *post*, p. 453. It was held that where the judgment of the County Court Judge was post-dated, the time for appealing given by s. 6 of the County Courts Act, 1875, was not thereby extended: *Wilberforce v. Sowton*, 39 L. T. 474.

**Counsel on appeals.**—Only one counsel will be heard on each side on an appeal from an inferior Court: *Hawes v. Peake*, 24 W. R. 407.

**Judge's notes.**—See County Courts Act, 1875, s. 6. See O. LIX., rr. 7 and 8, *post*, p. 452, as to the power of the Court to use evidence other than the Judge's notes, and O. LIX., r. 13, as to duty of Master of Crown Office to apply for copy of Judge's notes. The Judge should be asked to take a note, though the request is not a condition precedent to the right of appeal. Where the Judge took notes without being asked, the C. A. held that an appeal could be brought on those notes, but declined to say what they would have held if the Judge had not taken any note: *Seymour v. Coulson*, 5 Q. B. D. 359. In two cases the Judge's notes have been dispensed with: see *Morgan v. Davies*, 39 L. T. 60; and *The Confidence*, 40 L. T. 201. As to the time at which the request to the



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County Court Judge to take a note should be made, see *Pierpoint v. Cartwright*, 5 C. P. D. 139; *Morgan v. Rees*, 6 Q. B. D. 508,

A question of law upon which it is desired to appeal must be taken before the Judge at the trial: *Clarkson v. Musgrave*, 9 Q. B. D. 386, at p. 392.

*Remitted issues.*—It was held in *Pritchard v. Pritchard*, 14 Q. B. D. 55, that O. XXXIX., rr. 3 and 4, and O. LII., r. 2, did not apply to actions remitted to the County Court for the trial of issues under 19 & 20 Vict. c. 108, s. 26. Neither do O. LIX., rr. 9—17, apply to such cases. Consequently, applications for new trials in the case of remitted issues are still regulated by the old practice. See, too, *Hughes v. Finney*, 19 Q. B. D. 522. As to appeals in interpleader issues remitted to a County Court from the High Court, see s. 17 of the S. C. Jud. Act, 1884, *post*, p. 118, the effect of which is that there is the same appeal in such an interpleader as in a proceeding under the County Courts equitable jurisdiction. See County Courts Act, 1867 (30 & 31 Vict. c. 142), s. 8.

*County Court appeals in Admiralty matters.*—See O. LIX., r. 4, *post*, p. 451.

*Quarter Sessions.*—A case stated by Quarter Sessions under s. 269 of the Public Health Act, 1875, is subject to the provisions of this section, and no appeal lies from the Divisional Court without leave: *Reg. v. Swindon Local Board*, 49 L. J., Q. B. 522. It seems that no appeal lies from the refusal of a Divisional Court to give leave to appeal: *The Amstel*, 2 P. D. 186; but when the Queen's Bench Division, in the exercise of its original common law jurisdiction, affirms or quashes an order of sessions made subject to a special case, an appeal lies as of right without leave: *Reg. v. Savin*, 6 Q. B. D. 309. See, further, note to s. 19, *supra*.

*Appeal to C. A.*—An appeal lies to the C. A. when the Divisional Court gives special leave under this section, in spite of s. 20 of the Appellate Jurisdiction Act, 1876: *Crush v. Turner*, 3 Ex. D. 303. Where an action is remitted to the County Court, under s. 10 of the Act of 1867, no appeal lies from the Div. Court to the C. A. without leave: *Bowles v. Drake*, 8 Q. B. D. 325.

*Circumstances under which leave given.*—See *The Rona*, 46 L. T. 601.

*Order in Council.*—By s. 15 of S. C. Jud. Act, 1875, *post*, p. 74, Her Majesty may from time to time by Order in Council direct that the enactments relating to appeals from County Courts shall apply to any other inferior Court of record.

*Appeals from arbitrators and referees.*—By s. 8 of S. C. Jud. Act, 1884, *post*, p. 116, s. 45 of the S. C. Jud. Act, 1873, is made to apply to appeals from arbitrators and referees where there has been a compulsory reference to arbitration.

*Mayor's Court.*—An appeal from a judgment of the Mayor's Court, London, on a demurrer, lies not to the Divisional Court, but to the Court of Appeal: *Le Blanch v. Reuter's Telegraph Co.*, 1 Ex. D. 408; but when error on the record is not alleged, the appeal lies to the Divisional Court under this section: *Appleford v. Judkins*, 3 C. P. D. 489.

#### Sect. 46.

Cases and points may be reserved for or directed to be argued before Divisional Courts.

**46.** Subject to any Rules of Court, any Judge of the said High Court, sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case, for the consideration of a Divisional Court, or may direct any case, or point in a case, to be argued before a Divisional Court; and any Divisional Court of the said High Court shall have power to hear and determine any such case or point so reserved or so directed to be argued.

This section was repealed by s. 17 of App. Jur. Act, 1876, *post*, p. 89, so far as it is inconsistent with the latter section. The effect of that section and the Rules of 1883, is that the power of a Judge to reserve questions for a Divisional Court is taken away altogether. The Judge may at the trial deal with every question of law that arises, and give judgment accordingly. And, under s. 22 of S. C. Jud. Act, 1875, *post*, p. 77, it would seem that he may be required to deal on the spot with all such questions of law as are necessary for the purpose of properly and completely directing the jury, if there be a jury. Or he may, instead of giving judgment at or after the trial, adjourn the case for further consideration, or leave any party to move for judgment: O. XXXVI., r. 39, *post*, p. 301.



If the judgment of the Judge is wrong by reason of his misapplying the law to the facts, the remedy is by an appeal to the Court of Appeal: s. 19, *supra*; O. XL., rr. 3 to 5, *post*, p. 334.

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The only purpose for which, after an action has been tried and judgment given, it is necessary to go to the Divisional Court, is for a new trial in cases where the action has been tried by a jury, and in Queen's Bench actions which have been tried by a referee: s. 17 of App. Jur. Act, 1876, *post*, p. 89; O. LIX., r. 1, *post*, p. 449; O. XXXIX., r. 1, *post*, p. 328. If the trial takes place before a Judge without a jury, an application for a new trial, whatever the ground, must be made to the Court of Appeal: *Ibid.*; *Oastler v. Henderson*, 2 Q. B. D. 575.

**Sect. 47.**

**47.** The jurisdiction and authorities in relation to questions of law arising in criminal trials which are now vested in the Justices of either Bench and the Barons of the Exchequer by the Act of the session of the eleventh and twelfth years of the reign of her present Majesty, chapter seventy-eight, intituled "An Act for the further amendment of the administration of the Criminal Law," or any Act amending the same, shall and may be exercised after the commencement of this Act by the Judges of the High Court of Justice, or five of them at the least, of whom the Lord Chief Justice of England, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or one of such chiefs at least, shall be part. The determination of any such question by the Judges of the said High Court in manner aforesaid shall be final and without appeal; and no appeal shall lie from any judgment of the said High Court in any criminal cause or matter, save for some error of law apparent upon the record, as to which no question shall have been reserved for the consideration of the said Judges under the said Act of the eleventh and twelfth years of her Majesty's reign.

Provision for  
Crown cases  
reserved.

Appeal in  
criminal  
matters.

*Effect of section.*—The earlier part of this section deals only with the Court for Crown Cases Reserved. But the latter words, precluding any appeal from a judgment of the High Court in any criminal matter, are general in their application.

**CASES IN WHICH IT HAS BEEN HELD NO APPEAL LIES.**—Judgment of the Q. B. D. discharging an order to review taxation of costs on a criminal information for libel: *Reg. v. Steel*, 2 Q. B. D. 37.

Judgment of the same Court discharging a rule for a certiorari to bring up and quash a summary conviction for trespassing in pursuit of game: *Reg. v. Fletcher*, 2 Q. B. D. 43.

From the refusal of the Q. B. D. to grant a certiorari to remove an indictment to the C. C. C. under 19 & 20 Vict. c. 16: *Reg. v. Rudge*, 16 Q. B. D. 459.

Judgment of the Divisional Court on appeal from inferior Courts (s. 45, *supra*), upon a case stated by justices quashing a conviction for keeping a common gaming house: *Blake v. Beech*, 2 Ex. D. 335.

Judgment of the Q. B. D. upon a case stated by justices as to an information for contravening the bye-laws of a school under the Elementary Education Act, 1874: *Mellor v. Denham*, 5 Q. B. D. 467.

Order of the Queen's Bench Division, quashing an order of justices under s. 92 of the Public Health Act, 1875, as to abating nuisances: *Reg. v. Whitchurch*, 7 Q. B. D. 534.

Summary conviction under the Weights and Measures Acts: *Reg. v. Baxendale*, 6 Q. B. D. 144 (n).

Order in a bastardy case: *Davies v. Evans*, 9 Q. B. D. 238.

Refusal to admit to bail: *Reg. v. Foote*, 10 Q. B. D. 379.

Decision of the Q. B. D. discharging a rule nisi for a certiorari to bring up an order for restitution made under 24 & 25 Vict. c. 96, s. 100: *Reg. v. Justices of C. C. C.*, 18 Q. B. D. 314.

It was formerly considered doubtful whether an appeal would lie from an order made in an extradition case: *Reg. v. Weil*, 9 Q. B. D. 701; but it has recently been decided that no appeal lies from an order made upon an application for a writ of *habeas corpus* in the case of a fugitive criminal committed under the Extradition Act, 1870: *Ex parte Woodhall*, 20 Q. B. D. 832.

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ss. 47—49.**

Committal for contempt: whether a committal for contempt is not a criminal matter in which no appeal lies from a Divisional Court, *quære*: *Reg. v. Jordan*, 36 W. R. 797.

**WHERE APPEAL LIES.**—An appeal lies from the judgment of the Q. B. D. upon a special case stated under s. 33 of the Summary Jurisdiction Act, 1879, in proceedings before justices for non-repair of a highway: *Loughborough v. Curzon*, 17 Q. B. D. 344.

In *Reg. v. Holl*, 7 Q. B. D. 575, it was held, that an appeal lay from an order of the Queen's Bench Division, discharging a rule for a mandamus to Election Commissioners to grant a certificate to a witness.

An appeal lies to the C. A. from a judgment of a Divisional Court striking a solicitor off the rolls, as it is not a "judgment in a criminal cause or matter" within the meaning of this section: *Re Howdwick*, 12 Q. B. D. 148.

**Criminal procedure.**—By s. 71, *infra*, for which s. 19 of S. C. Jud. Act, 1875, is now substituted, criminal procedure remains as it has been unless and until altered by rule.

By O. LXVIII., *post*, p. 509, criminal matters are exempted from the operation of the Rules of Court; therefore, where in a criminal case there is error on the record, the matter is brought before the Court of Appeal by writ of error according to the old practice. See *e.g.* *Bradlaugh v. The Queen*, 3 Q. B. D. 607. See, too, s. 19 of S. C. Jud. Act, 1875, *post*, p. 76.

**Quo Warranto.**—Although quo warranto is in the nature of a criminal proceeding (see *R. v. Seale*, 5 E. & B. 1, Ex. Ch.), in *Reg. v. Collins*, 2 Q. B. D. 30, a quo warranto information was tried without a jury, and an appeal brought from the judgment of the Queen's Bench Division as if it were an ordinary civil action. But see now O. LXVIII., r. 2, *post*, p. 509, excluding quo warranto from the provisions of O. LVIII., and Crown Office Rules, 1886, rr. 51—59.

**Quorum of Court.**—In so far as this section relates to the quorum of the Court for Crown Cases Reserved, it is amended by s. 15 of S. C. Jud. Act, 1881, *post*, p. 108, which provides that the jurisdiction given thereby may be exercised by any five or more of the Judges of the High Court, of whom the Lord Chief Justice must be one unless he is prevented by illness or otherwise, in which case there must be a written certificate to that effect.

**Sect. 48.**

**48.** [*Motions for new trials to be heard by Divisional Courts.*]

This section was repealed by s. 33 of S. C. Jud. Act, 1875, *post*, p. 82.

**Sect. 49.**

What orders shall not be subject to appeal.

**49.** No order made by the High Court of Justice or any Judge thereof, by the consent of parties, or as to costs only, which by law are left to the discretion of the Court, shall be subject to any appeal, except by leave of the Court or Judge making such order.

#### ORDERS BY CONSENT.

**Interpleader.**—In *Eade v. Winsor*, 47 L. J., C. P. 584, it was held that where an interpleader issue was by consent tried by a Judge at Chambers, the order made by him came within this section and was not appealable. And see now O. LVII., rr. 8, 11, *post*, pp. 431, 432; *Lyon v. Morris*, 19 Q. B. D. 139.

**Discovery by consent.**—See *Bustros v. White*, 1 Q. B. D. 423.

**Undertakings not to appeal.**—See note to s. 19, *supra*.

**Implied authority of counsel.**—It is within the authority of counsel conducting a cause in Court to consent to a compromise on terms, unless the client has withdrawn his authority to the knowledge of the opposite party: *Matthews v. Munster*, 20 Q. B. D. 141. Counsel has power, under his implied authority, to agree not to appeal: *Re West Devon Great Consols Mine*, 38 Ch. D. 51.

**Withdrawal of consent.**—It was held in *Rogers v. Horn*, 26 W. R. 432, that where the parties have consented to an order, the consent may be retracted at any time before the order is drawn up; but in *Harvey v. The Croydon Rural Sanitary Authority*, 26 Ch. D. 249, it was held by the C. A. that where counsel, with the authority of his client, has consented to an order, that consent cannot be withdrawn, even before the order is drawn up, unless it can be shown that it was given under mistake. See also *West Devon Great Consols Mine*, 38 Ch. D. 51. See, too, *A.-G. v. Tomline*, 7 Ch. D. 388, at p. 389. See by way of analogy the remarks of Jessel, M. R., as to the power of a Judge to re-consider an order before it is finally drawn up: *Re St. Nazaire Co.*, 12 Ch. D. 88, at p. 91. See



also some remarks in an opposite sense by Fry, J., as to the withdrawal of a compromise: *Davis v. Davis*, 13 Ch. D. 861.

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### APPEALS FOR COSTS.

*Generally.*—See *Harris v. Aaron*, 4 Ch. D. 749; *Harpham v. Shacklock*, 19 Ch. D. 207, at p. 215; *Llanoev v. Homfray*, 19 Ch. D. 224, at p. 231; *Graham v. Campbell*, 7 Ch. D. 490; *Morgan and Wurtzburg*, pp. 157—161.

*Costs which by law are left to the discretion of the Court.*—See O. LXV., r. 1, *post*, p. 471.

*Party in contempt.*—Where the jurisdiction of a Judge to inflict costs on a party arises from such party being guilty of breach of an injunction or other misconduct, an appeal lies as to costs, although the Judge makes no order except that the party shall pay costs: *Witt v. Corcoran*, 2 Ch. D. 69; *Stevens v. Metropolitan District Railway Co.*, 29 Ch. D. 60; *Re Clements*, 46 L. J., Ch. 375. But where an application to commit is refused there can be no appeal: *Ashworth v. Outram*, 5 Ch. D. 943; but see, *contra*, *Jarman v. Chatterton*, 20 Ch. D. 493.

*Costs of trustees and mortgagees.*—An order refusing a trustee or mortgagee his costs out of the estate is subject to appeal; the right is a matter of contract, and a trustee can only be deprived of them for misconduct: *Re Chennell*, 8 Ch. D. 492; *Re Sarah Knight's Will*, 26 Ch. D. 82; *Turner v. Hancock*, 20 Ch. D. 303; *Cotterell v. Stratton*, 8 Ch. 295; *Re Love*, 29 Ch. D. 348; *Johnstone v. Cox*, 19 Ch. D. 17; *Re Pugh*, 57 L. T. 858. If the Judge, notwithstanding charges of misconduct against a mortgagee, allows him his costs, the mortgagor has no right of appeal: *Charles v. Jones*, 33 Ch. D. 80. Where the Judge has satisfied himself that there has been unreasonable conduct on the part of a mortgagee, his discretion as to the mortgagee's costs is unfettered. The C. A. has only to see whether there has been such conduct. If there has been such, no appeal lies from the order as to costs: *Smallpiece v. Lee*, 30 Sol. J. 61.

*Costs, charges, and expenses.*—The charges and expenses of a trustee are not "costs" within the meaning of this section, and therefore an appeal lies from an order giving a trustee his costs, charges, and expenses out of a fund: *Re Chennell*, 8 Ch. D. 492.

*Costs of Administration actions.*—Such costs are now in the discretion of the Court; see O. LXV., r. 1, *post*, p. 471. Under the repealed O. LV. it was held that a residuary legatee plaintiff was under ordinary circumstances entitled to his costs out of the estate *ex debito justitiæ*, and that an appeal would lie from an order depriving him of costs: *Farron v. Austin*, 18 Ch. D. 58; and the same rule still obtains as to the costs of proceedings in an action for administration taken before O. LXV., r. 1, came into operation; the costs of proceedings taken subsequently being in the unfettered discretion of the Judge; *Re McClellan*, 29 Ch. D. 495. Costs of a hostile action seeking to charge the defendant with costs on the ground of misconduct are not within the old rule of the Court of Chancery, that a plaintiff in an administration action is entitled to costs out of the fund, but such costs were always in the discretion of the Judge: *Williams v. Jones*, 34 Ch. D. 120. The decision of a Judge of the High Court ordering a defendant executor to pay the costs of an administration action, on the ground that he has caused litigation by refusing to furnish accounts, is subject to appeal: *Re Pugh*, 57 L. T. 858.

*Where question of principle involved.*—If an order, though relating to costs, involves a question of principle, an appeal lies: *Re Rio Grande Co.*, 5 Ch. D. 282; *Ex parte Waddell*, 6 Ch. D. 328; *The City of Manchester*, 5 P. D. 221.

*Irregular order as to costs.*—Where costs were imposed by way of penalty, it was held that such an order was irregular, and that an appeal from it would lie: *Willmott v. Barber*, 17 Ch. D. 772.

*Solicitor ordered to pay costs personally.*—Such an order is not within the section, and is therefore subject to appeal without leave: *Re Bradford*, 15 Q. B. D. 635.

*Appellant failing on questions of substance.*—Unless the appellant can succeed on the questions of substance he cannot ask the C. A. to review the question of costs. Unless a substantial variation is made in the order appealed from, the fact that a substantial question has been raised will not of itself be enough to allow the question of costs to be gone into on the appeal: *Games v. Bonnor*, 33 W. R. 64; and see *Harpham v. Shacklock*, 19 Ch. D. 207, at p. 215; *Graham v. Campbell*, 7 Ch. D. 490.

*Action dismissed for want of prosecution.*—The costs of an order dismissing an



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action for want of prosecution are now in the discretion of the Judge, and such an order is not subject to appeal: *Snelling v. Pylling*, 29 Ch. D. 85.

*Order for inspection.*—The costs of an inspection of property under O. L. are discretionary, and no appeal lies from an order granting them: *Mitchell v. Darley Co.*, 10 Q. B. D. 457.

*Interpleader.*—No appeal lies from the order of a Judge giving costs in an interpleader issue: *Hartmont v. Foster*, 8 Q. B. D. 82.

*Order that defendant pay costs.*—Where at the trial the defendant is simply ordered to pay the costs of the action an appeal lies, for such an order implies a declaration that the plaintiff has a good cause of action, and this is therefore the question at issue in the appeal: *Dicks v. Yates*, 18 Ch. D. 76; and see *Foster v. G. W. Ry. Co.*, 8 Q. B. D. 515. But no appeal lies from an order directing that out of partnership assets costs incurred by a claim of the plaintiff which failed should be paid: *Butcher v. Pooler*, 24 Ch. D. 273.

*Jury cases.*—Where an action is tried with a jury, the Judge by whom it is tried has no jurisdiction, under O. LXV., r. 1, to make an order by which the costs will not follow the event, unless there exist “good cause” within the meaning of that rule, and consequently there is a right of appeal with respect to the existence of the facts necessary to give the Judge jurisdiction to make such an order: *Jones v. Curling*, 13 Q. B. D. 262; Cf. *Huxley v. West London Ry. Co.*, 17 Q. B. D. 373.

*Order for new trial on terms, &c.*—In the case of *Metropolitan Board v. Hill*, 5 App. Cas. 582, the Divisional Court made an order for a new trial on the application of the defendants. The C. A. varied the order by granting a new trial only on condition that the defendants should within two months pay the costs of the first trial. The defendants appealed to the House of Lords, who held that this was not an appeal as to costs only, and that the appeal would lie.

*Leave to appeal.*—Where a Judge gives leave to appeal from an order as to costs, the order made is still a discretionary order, which the C. A. must recognize as such: *Re Gilbert*, 28 Ch. D. 549. A defendant to an action which is dismissed without costs should apply for leave to appeal when the action is dismissed: leave will not be given after the plaintiff has given notice of, and set down, an appeal: *May v. Thompson*, W. N. (1882), 53. As to the principles on which the Court should act in giving leave to appeal, see *Ex parte Gilchrist*, 17 Q. B. D. 521, at p. 528.

*Order made by master, &c.*—This section does not apply to an order made by a master or district registrar: *Foster v. Edwards*, 48 L. J., C. P. 767.

#### Sect. 50.

As to dis-  
charging  
orders made in  
Chambers.

**50.** Every order made by a Judge of the said High Court in Chambers, except orders made in the exercise of such discretion as aforesaid, may be set aside or discharged upon notice by any Divisional Court, or by the Judge sitting in Court, according to the course and practice of the Division of the High Court to which the particular cause or matter in which such order is made may be assigned; and no appeal shall lie from any such order, to set aside or discharge which no such motion has been made, unless by special leave of the Judge by whom such order was made, or of the Court of Appeal.

*Judge's jurisdiction in chambers.*—See s. 39, *supra*, and note thereto.

*Practice in chambers.*—See O. LIV., and Q. LV., *post*, pp. 394, 400.

*Practice in Chancery Division.*—In the Chancery Division, where a question has been argued before the Judge himself in Chambers, an appeal may be made direct to the Court of Appeal, without leave: *Murr v. Cooke*, 24 W. R. 756; *Northampton Coal Co. v. Midland Waggon Co.*, 7 Ch. D. 500. But in the absence of special circumstances, a certificate from the Judge that he does not desire to hear further argument must be obtained: *Re Elsom*, 6 Ch. D. 347; *Re Marsh*, W. N. (1877), 205.

In practice, however, such certificate is not usually given, but the Judge requires a motion to be made in Court to discharge the order: *Holloway v. Cheston*, 19 Ch. D. 516; *Re Somerville*, 56 L. T. 424. Kay, J., however, grants such a certificate if all parties have been represented in Chambers: *A.-G. v. Llewellyn*, 58 L. T. 367.

*Time for appeals.*—Where a motion has been made in Court to a Judge of the Chancery Division to discharge an order made by him in Chambers, and he refuses the application, an appeal may be brought within *twenty-one days* to the Court of Appeal. As regards the time for making such motion to the Judge in Court, O. LVIII., r. 15, does not apply, but by analogy the practice of the Chancery Division is that no such motion shall be made without special leave after twenty-one days: *Dickson v. Harrison*, 9 Ch. D. 243; *Heatly v. Newton*, 19 Ch. D. 326; *Re Hardwidge*, 52 L. T. 40; *Re Lewis*, 31 Ch. D. 623.

*Practice in Probate cases.*—The practice in appeals from Chambers to the Court of Appeal in Probate cases is the same as in the Chancery Division: *Rigg v. Hughes*, 9 P. D. 68.

*Interpleader.*—As to appeals from decisions at Chambers in interpleader, see O. LVII., rr. 8, 11, *post*, pp. 431, 432, and notes thereto.

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#### Sect. 51.

51. Upon the request of the Lord Chancellor, it shall be lawful for any Judge of the Court of Appeal, who may consent so to do, to sit and act as a Judge of the said High Court or to perform any other official or ministerial acts for or on behalf of any Judge absent from illness or any other cause, or, in the place of any Judge whose office has become vacant, or as an additional Judge of any Division; and while so sitting and acting any such Judge of the Court of Appeal shall have all the power and authority of a Judge of the said High Court.

Provision for  
absence or  
vacancy in the  
office of a  
Judge.

The power given by this section is now supplemented by s. 12 of S. C. Jud. Act, 1881, *post*, p. 107, which enables any Judge, who may consent to do so, to sit for another and dispose of any interlocutory application or matter without any request from the Lord Chancellor. See, also, O. XLIX., r. 4, *post*, p. 369.

*Jurisdiction of C. A. in Chancery and Lunacy.*—The jurisdiction of the Lords Justices sitting in Lunacy to act as additional Judges of the Chancery Division is conferred by letter of request of the Lord Chancellor under this section. As to the terms of such letter, see *Re Platt*, 36 Ch. D. 410. The letter of request is dated Nov. 10, 1875.

*Case where section applies.*—This section applies to a case where an interim injunction is urgently required, and the Judge before whom the action is pending has risen for a few days' vacation during the regular sittings: *Chapman v. Real Property Trust*, 7 Ch. D. 732.

#### Sect. 52.

52. In any cause or matter pending before the Court of Appeal, any direction incidental thereto, not involving the decision of the appeal, may be given by a single Judge of the Court of Appeal; and a single Judge of the Court of Appeal may at any time during vacation make any interim order to prevent prejudice to the claims of any parties pending an appeal as he may think fit; but every such order made by a single Judge may be discharged or varied by the Court of Appeal or a Divisional Court thereof.

Power of a  
single Judge  
in Court of  
Appeal.

See *Johnstone v. Royal Courts Co.*, W. N. (1883), 5. A single Judge of the Court of Appeal has no jurisdiction under this section until an appeal has been presented: *Re Tussaud*, 31 Sol. J. 703.

*Constitution of the Court of Appeal.*—See s. 4 of S. C. Jud. Act, 1875, *post*, p. 66; and s. 16 of App. Jur. Act, 1876, *post*, p. 88.

*When an appeal lies.*—See s. 19, *supra*, and notes thereto.

*Practice upon appeal.*—See O. LVIII., *post*, p. 434.

*Vacations.*—See s. 28, *supra*, and O. LXIII., *post*, p. 465.

#### 53. [Divisional Courts of Court of Appeal.]

#### Sect. 53.

This section was repealed by s. 33 of S. C. Jud. Act, 1875, and s. 12 of that Act, *post*, p. 72, substituted.

#### 54. [Judges not to sit on appeal from their own judgments.]

#### Sect. 54.

This section was repealed by s. 4 of S. C. Jud. Act, 1875, *post*, p. 66, which is amended and explained by s. 11 of S. C. Jud. Act, 1881, *post*, p. 107.



Act 1873,  
ss. 55—57.

Sect. 55.

**55.** [*Arrangements for business of Court of Appeal, and for hearing Appeals transferred from the Judicial Committee of the Privy Council.*]

By s. 2 of S. C. Jud. Act, 1875, *post*, p. 65, the operation of this section, as well as that of ss. 20 and 21, was suspended until the 1st November, 1876, and by s. 24 of App. Jur. Act, 1876, *post*, p. 91, the three sections were repealed.

## PART IV.

### TRIAL AND PROCEDURE.

Sect. 56.

References for  
inquiry and  
report, and  
assessors.

**56.** Subject to any Rules of Court and to such right as may now exist to have particular cases submitted to the verdict of a jury, any question arising in any cause or matter (other than a criminal proceeding by the Crown) before the High Court of Justice or before the Court of Appeal, may be referred by the Court or by any Divisional Court or Judge before whom such cause or matter may be pending, for inquiry and report to any official or special referee, and the report of any such referee may be adopted wholly or partially by the Court, and may (if so adopted) be enforced as a judgment by the Court. The High Court or the Court of Appeal may also, in any such cause or matter as aforesaid in which it may think it expedient so to do, call in the aid of one or more assessors specially qualified, and try and hear such cause or matter wholly or partially with the assistance of such assessors. The remuneration, if any, to be paid to such special referees or assessors shall be determined by the Court.

*Form of Order.*—See App. K., No. 32, *post*, p. 620: see also *Broder v. Saillard*, 2 Ch. D. 692, at p. 694, for a form of order referring to an architect for report on the question whether certain stables constituted a nuisance. See also O. XXXVI., rr. 54, 55, *post*, p. 306, as to dealing with the Report of the Referee. For forms of summons, see Dan. Forms, p. 341.

*Inquiry by examination of witnesses.*—There is power under this section to order such inquiry: *Baroness Wenlock v. River Dee Co.* (2), 19 Q. B. D. 155.

Sect. 57.

Power to  
direct trial of  
issues before  
referees.

**57.** In any cause or matter (other than a criminal proceeding by the Crown) before the said High Court in which all parties interested who are under no disability consent thereto, and also without such consent in any such cause or matter requiring any prolonged examination of documents or accounts, or any scientific or local investigation which cannot, in the opinion of the Court or a Judge, conveniently be made before a jury, or conducted by the Court through its other ordinary officers, the Court or a Judge may at any time, on such terms as may be thought proper, order any question or issue of fact or any question of account arising therein, to be tried either before an official referee, to be appointed as hereinafter provided, or before a special referee to be agreed on between the parties; and any such special referee so agreed on shall have the same powers and duties and proceed in the same manner as an official referee. All such trials before referees shall be conducted in such manner as may be prescribed by Rules of Court, and subject thereto in such manner as the Court or Judge ordering the same shall direct.

*Effect of section.*—In *Longman v. East*, 3 C. P. D. 142, and *Braginton v. Yates*, W. N. (1880), 150, it was decided that under ss. 56, 57, an action could not be



referred, but only the questions or issues of fact therein, and that an official referee had no power to order judgment to be entered; but now by O. XXXVI., r. 50, *post*, p. 305, it is provided that the referee may direct judgment to be entered. The referee, however, is not to decide the issue in the action. He is only to ascertain the facts so as to enable the Court to decide the issue: *Cardinall v. Cardinall*, 25 Ch. D. 772.

Act 1873,  
ss. 57—59.

**Compulsory powers.**—It has been held that any question which might be referred to a master under s. 3 of the C. L. P. Act, 1854, may also be referred compulsorily to an official referee: *Ward v. Pilley*, 5 Q. B. D. 427. For other cases where the exercise of compulsory powers has been discussed, see *Rowcliffe v. Leigh*, 3 Ch. D. 292; *Leigh v. Brooks*, 5 Ch. D. 592; *Hoch v. Boor*, 49 L. J., C. P. 665; *Knight v. Coales*, 35 W. R. 679. In any case in which there is power to refer compulsorily a question of account there is also power to refer at the same time all the other issues in the action: *Ward v. Pilley*, 5 Q. B. D. 427; *Knight v. Coales*, 19 Q. B. D. 296. See also *Clow v. Harper*, 3 Ex. D. 198. As to the words "prolonged examination of accounts," see *per Brett, L. J.*, in *Ormerod v. Todmorden Mill Co.*, 8 Q. B. D. 664, at p. 677.

**Appeal.**—An appeal lies from an order made under this or the preceding section: *Ormerod v. Todmorden Mill Co.*, 8 Q. B. D. 664.

**Form of order.**—See App. K., No. 33, *post*, p. 620. The form there given should be followed strictly: *Baroness Wenlock v. River Dee Co.*, 19 Q. B. D. 155, at p. 159, *per Fry, L. J.* The form of order should state whether it is made under s. 56 or s. 57: *White v. Peto*, W. N. (1886), 165.

**Powers of Referees.**—See O. XXXVI., Part VIII., *post*, pp. 302—306; also O. XL., r. 6, *post*, p. 335.

**Appointment of Official Referees.**—See s. 83, *infra*.

**Fees.**—See *post*, pp. 676, 694.

**Provisions of Act of 1884.**—By s. 9 of S. C. Jud. Act, 1884, *post*, p. 116, a Judge may order the whole of a cause or matter to be tried by an Official Referee; and by ss. 10 and 11 of the same Act, matters which, under the statutes relating to arbitration, could be referred to an arbitrator, can be referred to an Official Referee.

**58.** In all cases of any reference to or trial by referees under this Act the referees shall be deemed to be officers of the Court, and shall have such authority for the purpose of such reference or trial as shall be prescribed by Rules of Court or (subject to such rules) by the Court or Judge ordering such reference or trial; and the report of any referee upon any question of fact on any such trial shall (unless set aside by the Court) be equivalent to the verdict of a jury.

Sect. 58.

Power of referees, and effect of their findings.

**New trial.**—The report being equivalent to a verdict, a new trial may be had, or the report set aside as given by mistake, or as against the evidence: *Walker v. Bunkell*, 22 Ch. D. 722, at p. 726.

**Time for moving.**—A motion may be made to set aside the report at any time before judgment is given upon it: *Dyke v. Cannell*, 11 Q. B. D. 180; *Bedbrough v. Army & Navy Hotel Co.*, 53 L. J., Ch. 658.

**59.** With respect to all such proceedings before referees and their reports, the Court or such Judge as aforesaid shall have, in addition to any other powers, the same or the like powers as are given to any Court whose jurisdiction is hereby transferred to the said High Court with respect to references to arbitration and proceedings before arbitrators and their awards respectively, by the Common Law Procedure Act, 1854.

Sect. 59.

Powers of Court with respect to proceedings before referees.

**Appeal from an Arbitrator.**—See O. LIX., r. 3, *post*, p. 451.

**Adoption of Referee's report.**—See O. XXXVI., rr. 54 and 55, *post*, p. 306. See, too, ss. 9, 10, and 11 of S. C. Jud. Act, 1884, *post*, p. 116.

**Act 1873.  
ss. 60—63.**

**Sect. 60.**

Her Majesty  
may establish  
District Regis-  
tries in the  
country for  
the Supreme  
Court.

**60.** And whereas it is expedient to facilitate the prosecution in country districts of such proceedings as may be more speedily, cheaply, and conveniently carried on therein; it shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be District Registrars in such places as shall be in such order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and Her Majesty may thereby appoint that any Registrar of any County Court, or any Registrar or Prothonotary or District Prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a District Registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a District Registrar of the said High Court of Justice, or who shall hereafter be appointed such District Registrar, shall and may be a District Registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned. This section shall come into operation immediately upon the passing of this Act.

This section is amended by s. 13 of S. C. Jud. Act, 1875, *post*, p. 73.

An Order in Council was made, dated August 12th, 1875, establishing a number of District Registries and defining their districts. See the Order, *post*, p. 799. By Order in Council, dated August 11th, 1884, certain additional Registries were established. See, *post*, p. 801.

By s. 22 of App. Jur. Act, 1876, *post*, p. 91, District Registrars are given power to appoint Deputies.

S. 22 of S. C. Jud. Act, 1881, *post*, p. 110, enables the Lord Chancellor, if he thinks it expedient, to appoint a solicitor of five years' standing to be a District Registrar.

The same section prohibits District Registrars from practising in their own registries.

**Sect. 61.**

Seals of  
District Regis-  
tries.

**61.** In every such District Registry such seal shall be used as the Lord Chancellor shall from time to time, either before or after the time fixed for the commencement of this Act, direct, which seal shall be impressed on every writ and other document issued out of or filed in such District Registry, and all such writs and documents, and all exemplifications and copies thereof, purporting to be sealed with the seal of any such District Registry, shall in all parts of the United Kingdom be received in evidence without further proof thereof.

**Sect. 62.**

Powers of  
District  
Registrars.

**62.** All such District Registrars shall have power to administer oaths and perform such other duties in respect of any proceedings pending in the said High Court of Justice or in the said Court of Appeal as may be assigned to them from time to time by Rules of Court, or by any special order of the Court.

*Powers of District Registrars.*—See O. XXXV., *post*, p. 278.

**Sect. 63.**

**63.** [*Fees to be taken by District Registrars.*]

This section was repealed by s. 33 of S. C. Jud. Act, 1875, *post*, p. 82; and the provisions of s. 26 of that Act are substituted for it. See, *post*, p. 80.



**64.** Subject to the Rules of Court, in force for the time being, writs of summons for the commencement of actions in the High Court of Justice shall be issued by the District Registrars when thereunto required; and unless any order to the contrary shall be made by the High Court of Justice, or by any Judge thereof, all such further proceedings, including proceedings for the arrest or detention of a ship, her tackle, apparel, furniture, cargo, or freight, as may and ought to be taken by the respective parties to such action in the said High Court down to and including entry for trial, or (if the plaintiff is entitled to sign final judgment or to obtain an order for an account by reason of the non-appearance of the defendant) down to and including final judgment, or an order for an account, may be taken before the District Registrar, and recorded in the District Registry, in such manner as may be prescribed by Rules of Court; and all such other proceedings in any such action as may be prescribed by Rules of Court shall be taken and if necessary may be recorded in the same District Registry.

*Proceedings in District Registries.*—See O. V., Part I.; O. XII.; O. XXXV.; O. LIV., r. 12, and notes thereto.

*Admiralty cases.*—See O. XXIX., *post*, p. 246.

**65.** Any party to an action in which a writ of summons shall have been issued from any such District Registry shall be at liberty at any time to apply, in such manner as shall be prescribed by Rules of Court, to the said High Court, or to a Judge in Chambers of the Division of the said High Court to which the action may be assigned, to remove the proceedings from such District Registry into the proper office of the said High Court; and the Court or Judge may, if it be thought fit, grant such application, and in such case the proceedings and such original documents, if any, as may be filed therein shall upon receipt of such order be transmitted by the District Registrar to the proper office of the said High Court, and the said action shall thenceforth proceed in the said High Court in the same manner as if it had been originally commenced by a writ of summons issued out of the proper office in London; or the Court or Judge, if it be thought right, may thereupon direct that the proceedings may continue to be taken in such District Registry.

*Removal of proceedings.*—See O. XXXV., rr. 13 to 18, *post*, pp. 282, 283, and notes thereto.

**66.** It shall be lawful for the Court or any Judge of the Division to which any cause or matter pending in the said High Court is assigned, if it shall be thought fit, to order that any books or documents may be produced, or any accounts taken or inquiries made, in the office of or by any such District Registrar as aforesaid; and in any such case the District Registrar shall proceed to carry all such directions into effect in the manner prescribed; and in any case in which any such accounts or inquiries shall have been directed to be taken or made by any District Registrar, the report in writing of such District Registrar as to the result of such accounts or inquiries may be acted upon by the Court as to the Court shall seem fit.

*Production of documents.*—See O. XXXI., *post*, p. 258, and notes thereto.

*Inquiries and accounts.*—See O. XV.; O. XXXIII., *post*, pp. 170, 272; and *Re Bowen*, 20 Ch. D. 538.

**67.** The provisions contained in the fifth, seventh, eighth, and

**Act 1873,  
ss. 64—67.**

**Sect. 64.**

Proceedings to be taken in District Registries.

**Sect. 65.**

Power for Court to remove proceedings from District Registries.

**Sect. 66.**

Accounts and inquiries may be referred to District Registrars.

**Sect. 67.**

30 & 31 Vict.



**Act 1873,  
s. 67.**

c. 142, ss. 5,  
7, 8, & 10, to  
extend to  
actions in  
High Court.

Costs not  
recoverable  
in Superior  
Courts where  
less than 20%  
on contract or  
10% on tort.

\* 45 & 46 Vict.  
c. 57, s. 4.

tenth sections of the County Courts Act, 1867, shall apply to all actions commenced or pending in the said High Court of Justice in which any relief is sought which can be given in a County Court.

**COUNTY COURTS ACT, 1867 (30 & 31 Vict. c. 142), s. 5:—**

"If in any action commenced after the passing of this Act in any of Her Majesty's Superior Courts of Record the plaintiff shall recover a sum \*[less than] twenty pounds if the action is founded on contract, or ten pounds if founded on tort, whether by verdict, judgment by default, or on demurrer, or otherwise, he shall not be entitled to any costs of suit unless the Judge certify on the record that there was sufficient reason for bringing such action in such Superior Court, or unless the Court or a Judge at Chambers shall by rule or order allow such costs."

*General rule as to costs.*—Order LXV., r. 1, *post*, p. 471, contains the general rule as to costs. The effect of this Order, read by the light of the 67th section, is to supersede all previous statutes as to costs which are inconsistent with it, with the exception of so much of the provisions of the County Courts Act, 1867, as are expressly saved by that section: *Garnett v. Bradley*, 3 App. Cas. 944; *Ex parte Mercers' Co.*, 10 Ch. D. 481; *Tennant v. Ellis*, 6 Q. B. D. 46. It does not give any new jurisdiction to order costs to be paid by persons who before the Judicature Acts could not have been ordered to pay them, but only regulates the mode in which costs are to be dealt with in cases where the Court previously had jurisdiction, either original or statutory, to award costs: *Re Mills' Estate*, 34 Ch. D. 24; *Holliday and Mayor of Wakefield*, 20 Q. B. D. 699.

*Application of the section.*—Before the Judicature Acts, it was held that this section applied to actions which could not, as well as to actions which could, be brought in a County Court: *Sampson v. Mackay*, L. R. 4 Q. B. 643. But now by the terms of the 67th section its operation is confined to actions in which the relief sought could be given by a County Court: see *Parsons v. Tinsling*, 2 C. P. D. 119 (action for libel); *Garnett v. Bradley*, 3 App. Cas. 944 (action for slander).

It was also held that the words "commenced after the passing of this Act" in the fifth section were to be treated as parenthetical, and that the section applied to all actions in the Superior Court, whether commenced there or not, as, for instance, to the case of an action commenced in the Mayor's Court and removed by certiorari into the Queen's Bench: *Pellias v. Breslau*, L. R., 6 Q. B. 438; see, too, *Flitters v. Alfrey*, L. R., 10 C. P. 29. This construction would still hold good as regards cases removed from a County Court into the High Court; but, having regard to the authorities cited above, it seems clear that the 5th section no longer applies to an action removed from any other Inferior Court into the High Court, unless it be of such a nature that it could have been brought in a County Court.

*Discretion of Court.*—There is now full discretion over costs vested in the Court, except in certain particular cases. The Act and Rules have incorporated into the second alternative in the above section of the County Courts Act, 1867, the power to give costs less than full High Court costs: *Neaves v. Spooner*, 36 W. R. 257.

*Contract or tort.*—As to what are actions founded on contract, and what on tort, within the meaning of this section, see *Legge v. Tucker*, 1 H. & N. 500; *Baylis v. Lintott*, L. R., 8 C. P. 345. An action against a carrier for misdelivery of goods after notice is founded on tort: *Pontifex v. Midland Ry. Co.*, 3 Q. B. D. 23. An action against a common carrier for loss of goods is founded on contract: *Fleming v. Manchester Ry. Co.*, 4 Q. B. D. 81. Detinue is an action founded on tort: *Bryant v. Herbert*, 3 C. P. D. 389. Where an action founded on tort was referred, a term of the reference being "costs of the action to abide the event," and the arbitrator found for the plaintiff, damages £10, it was held that the plaintiff was not entitled to costs: *Rutherford v. Wilkie*, 41 L. T. 435.

*Where action referred.*—It has been decided that where the action is referred either compulsorily or by agreement, and the plaintiff obtains judgment for less than the specified amount, the case is within the section: *Cowell v. Amman Co.*, 6 B. & S. 333; *Robertson v. Sterne*, 13 C. B., N. S. 248; *Smith v. Edge*, 2 H. & C. 659; *Fergusson v. Davison*, 8 Q. B. D. 470; but in the case of a reference by consent, the parties may contract themselves out of the statute: see *Galatti v. Wakefield*, 4 Ex. D. 249, where the arbitrator awarded plaintiff less than the specified amount, but directed defendant to pay the costs of the reference and award.

*Set-off.*—The rule applies where the plaintiff's claim is within the limits of the County Court jurisdiction, and has been reduced below the specified sum by set-off: *Ashcroft v. Foulkes*, 18 C. B. 261; *Beard v. Perry*, 2 B. & S. 493;

*Stooke v. Taylor*, 5 Q. B. D. 569; *Baines v. Bromley*, 6 Q. B. D. 691, at p. 694; though where the plaintiff's claim exceeds the limits of the County Court jurisdiction, but is reduced below the specified sum by set-off, it seems the rule does not apply: *Walesby v. Goulston*, L. R., 1 C. P. 567; *Neale v. Clarke*, 4 Ex. D. 286.

Act 1873,  
s. 67.

*Distinction between counter-claim and set-off.*—A counter-claim is different from a set-off, for it is in the nature of a cross action: see *Winterfield v. Bradnum*, 3 Q. B. D. 324, at p. 326, and *Baines v. Bromley*, 6 Q. B. D. 691; and therefore, where the plaintiff's claim has been reduced below the specified sum by damages on the defendant's counter-claim, the amount "recovered" is the amount for which the plaintiff would have been entitled to judgment, if there had been no counter-claim: *Stooke v. Taylor*, 5 Q. B. D. 569; see, too, *Halliman v. Price*, 27 W. R. 490. This follows from the rule that the term "event" in O. LXV., r. 1, must be read distributively: *Cole v. Firth*, 4 Ex. D. 301; *Berdan v. Greenwood*, 3 Ex. D. 251, at p. 257; *Myers v. Defries*, 5 Ex. D. 180; *Baines v. Bromley*, 6 Q. B. D. 691; *Ellis v. De Silva*, 6 Q. B. D. 521; which are inconsistent with *Staples v. Young*, 2 Ex. D. 324. See *Goutard v. Carr*, 53 L. J., Q. B. 55; *Lund v. Campbell*, 14 Q. B. D. 821; *Hawke v. Brear*, 14 Q. B. D. 841; *Ahrbecker v. Frost*, 17 Q. B. D. 606 (distinguishing *Lund v. Campbell*). It seems that when a counter-claim is against a person not a party to the action, s. 24, sub-s. 3 of the S. C. Jud. Act, 1873, and R. S. C. O. XXI. rr. 11, 12, 13, 14, do not render s. 5 of the Act of 1867 applicable to such a counter-claim: *Lewin v. Trimming*, 21 Q. B. D. 230.

*Money paid into Court.*—The word "recover" applies, where money less than the specified sum is paid in and accepted in satisfaction: *Parr v. Lillicrap*, 1 H. & C. 615; *Boulding v. Tyler*, 32 L. J., Q. B. 85.

*Where plaintiff claims more, but recovers less, than the specified sum.*—The section applies: *Chatfield v. Sidgwick*, 4 C. P. D. 459.

*Counter-claim.*—The section does not apply to the amount recovered by a defendant on his counter-claim: *Blake v. Appleyard*, 3 Ex. D. 195; see, too, *Chatfield v. Sidgwick*, 4 C. P. D. 459. As to counter-claims in County Court actions, see s. 18 of S. C. Jud. Act, 1884, *post*, p. 118.

*Solicitor-plaintiff.*—The section applies to an action in which a solicitor is plaintiff: *Blair v. Eisler*, 21 Q. B. D. 185.

*Certificate of Judge.*—The word Judge includes the Judge of a County Court to which the case is sent for trial: *Taylor v. Cass*, L. R., 4 C. P. 614; and an under-sheriff executing a writ of inquiry: *Craven v. Smith*, L. R., 4 Ex. 146. The Act requires that the Judge shall certify on the record. The Nisi Prius record being now abolished, the copy of the pleadings required by O. XXXVI., r. 30, *post*, p. 298, is a sufficient record. At Nisi Prius the Associate or Master makes an entry of such certificate, under O. XXXVI., r. 41, *post*, p. 302, and his certificate is the proper evidence of it. See *Ibid.* r. 42, *post*, p. 302. In the case of a County Court Judge the issue sent to the County Court, and in the case of an under-sheriff the writ of inquiry, is a sufficient record upon which to certify: *Taylor v. Cass*, L. R., 4 C. P. 614. The certificate need not be given during the assizes at which the cause is tried: *Bennett v. Thompson*, 6 E. & B. 683. A master to whom an action is referred with the powers of a Judge may certify, but only in his award: *Bedwell v. Wood*, 2 Q. B. D. 626.

*Power of Court or Judge to allow costs.*—The plaintiff may apply to the Court, or to a Judge at Chambers, for an order allowing his costs. The order cannot be made by a master or district registrar: O. XXXV., r. 6; O. LIV., r. 12, *post*, pp. 280, 396. The Court will not ordinarily overrule the discretion exercised by the Judge at the trial, though the decisions upon this point are not quite uniform: *Hatch v. Lewis*, 7 H. & N. 367; *Hinde v. Sheppard*, L. R., 7 Ex. 21; *Flitters v. Alfrey*, L. R., 10 C. P. 29; *Strachey v. Lord Osborne*, L. R., 10 C. P. 92. But upon new materials, or a different view of the case, the Court has allowed costs where the Judge had refused to certify: *Sampson v. Mackay*, L. R., 4 Q. B. 643; *Courtenay v. Wagstaff*, 16 C. B., N. S. 110. By virtue of the discretion conferred by S. C. Jud. Act, 1873, and O. LXV. r. 1 (*post*, p. 471), a Judge can now make any order as to costs which the justice of the case requires. He can give less than full High Court costs: *Neaves v. Spooner*, 36 W. R. 257.



Act 1873,  
s. 67.

**COUNTY COURTS ACT, 1867, s. 7:—**

In certain cases Judge of Superior Court may order cause to be tried in County Court.

"Where in any action of contract brought, or commenced in any of Her Majesty's Superior Courts of Common Law the claim indorsed on the writ does not exceed fifty pounds, or where such claim, though it originally exceeded fifty pounds, is reduced by payment, an admitted set-off or otherwise, to a sum not exceeding fifty pounds, it shall be lawful for the defendant in the action, within eight days from the day upon which the writ shall have been served upon him, if the whole or part of the demand of the plaintiff be contested, to apply to a Judge at Chambers for a summons to the plaintiff to show cause why such action should not be tried in the County Court or one of the County Courts in which the action might have been commenced; and on the hearing of such summons the Judge shall, unless there be good cause to the contrary, order such action to be tried accordingly, and thereupon the plaintiff shall lodge the original writ and the order with the registrar of the County Court mentioned in the order, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post, or otherwise, by the registrar to both parties or their attorneys, and the cause and all proceedings therein shall be heard and taken in such County Court as if the action had been originally commenced in such County Court; and the costs of the parties in respect of proceedings subsequent to the order of the Judge of the Superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings previously had in the Superior Court shall be allowed according to the scale in use in such latter Court."

"*Reduced by payment.*"—These words mean reduced by payment before action brought: *Osborne v. Homburg*, 1 Ex. D. 48; *Foster v. Usherwood*, 3 Ex. D. 1.

"*Admitted set-off.*"—It is not necessary that the set-off should be admitted by the defendant as well as by the plaintiff: *Percival v. Pedley*, 18 Q. B. D. 635.

"*£50 and interest.*"—A claim indorsed on a writ for "£50 and interest at 5 per cent. from the date hereof till payment or judgment" is a claim exceeding £50. On an application, in such a case, to send the action to the County Court, there is no power to impose a condition as to the costs of the trial in the High Court: *Insley v. Jones*, 4 Ex. D. 16.

"*Effect of order.*"—The cause, if an order is made, becomes for all purposes a County Court cause, and the Superior Court has no further control over it: *Moody v. Steward*, 6 Ex. 35.

"*Form of order.*"—See App. K., No. 44, *post*, p. 626.

"*Issue remitted for trial.*"—The power given by this section must not be confounded with that under 19 & 20 Vict. c. 108, s. 26, on the application of either party after issue joined, to order the trial of an action of contract to take place in a County Court, the action still remaining one in the Superior Court: see *Wheatcroft v. Foster*, E. B. & E. 737; *Balmforth v. Pledge*, L. R., 1 Q. B. 427. This last-mentioned power is not affected by the Judicature Acts: see, for instance, *Davis v. Godbehere*, 4 Ex. D. 215; and a form of judgment on an action so sent down for trial: App. F. No. 13, *post*, p. 588. An action may be so remitted where the claim endorsed on the writ originally exceeds £50, and, after issue of writ, is reduced below that sum by payment, in obedience to a judgment for a portion of the claim: *Gray v. Hopper*, 21 Q. B. D. 246. As to costs in such case, see O. LXV. r. 4, *post*, p. 478, and note thereto. The section does not apply to an action for unliquidated damages: *Knight v. Abbot*, 10 Q. B. D. 11; nor where there is a counter-claim for unliquidated damages: *Mackay v. Bannister*, 16 Q. B. D. 174.

**COUNTY COURTS ACT, 1867, s. 8:—**

Proceedings in equity may be transferred to County Courts which might have commenced therein.

"Where any suit or proceeding shall be pending in the High Court of Chancery, which suit or proceeding might have been commenced in a County Court, it shall be lawful for any of the parties thereto to apply at Chambers to the Judge to whose Court the said suit or proceeding shall be attached to have the same transferred to the County Court or one of the County Courts in which the same might have been commenced, and such Judge shall have power upon such application, or without such application if he shall see fit, to make an order for such transfer, and thereupon such suit or proceeding shall be carried on in the County Court to which the same shall be ordered to be transferred, and the parties thereto shall have the same right of appeal that they would have had had the suit or proceeding been commenced in the County Court."



Transfer under this section has been held to be a matter for the discretion of the Judge before whom the cause is pending, with which the Court of Appeal would not interfere: see *Linford v. Gudgeon*, 6 Ch. 359. Where an order has been made for transfer under this section, the Superior Court retains its jurisdiction in the action until the transfer is completed by all necessary steps being taken for that purpose: *David v. Howe*, 27 Ch. D. 533.

**Act 1873,  
ss. 67—75.**

#### COUNTY COURTS ACT, 1867, s. 10:—

"It shall be lawful for any person against whom an action for malicious prosecution, illegal arrest, illegal distress, assault, false imprisonment, libel, slander, seduction, or other action of tort may be brought in a Superior Court, to make an affidavit that the plaintiff has no visible means of paying the costs of the defendant should a verdict be not found for the plaintiff; and thereupon a Judge of the Court in which the action is brought shall have power to make an order that unless the plaintiff shall, within a time to be therein mentioned, give full security for the defendant's costs to the satisfaction of one of the masters of the said Court, or satisfy the Judge that he has a cause of action fit to be prosecuted in the Superior Court, all proceedings in the action shall be stayed, or in the event of the plaintiff being unable or unwilling to give such security, or failing to satisfy the Judge as aforesaid, that the cause be remitted for trial before a County Court to be therein named; and thereupon the plaintiff shall lodge the original writ and the order with the registrar of such County Court, who shall appoint a day for the hearing of the cause, notice whereof shall be sent by post or otherwise by the registrar to both parties or their attorneys; and the County Court so named shall have all the same powers and jurisdiction with respect to the cause as if both parties had agreed, by a memorandum signed by them, that the said County Court should have power to try the said action, and the same had been commenced by plaint in the said County Court; and the costs of the parties in respect of the proceedings subsequent to the order of the Judge of the Superior Court shall be allowed according to the scale of costs in use in the County Courts, and the costs of the proceedings in the Superior Court shall be allowed according to the scale in use in such latter Court."

Actions for malicious prosecution, &c., brought in Superior Courts may be remitted to County Court by Judge.

*Effect of section 67.*—The effect of s. 67 of this Act is not to repeal s. 10 of the County Courts Act, 1867. Therefore an action for slander may still be remitted to the County Court in the event of the plaintiff failing to give security for costs: *Stokes v. Stokes*, 19 Q. B. D. 419.

With respect to the relief which can be given in a County Court, see ss. 88 to 91, *infra*, and s. 18 of S. C. Jud. Act, 1884, *post*, p. 118.

#### **68—74.** [*Providing for rules as to procedure under the Act.*]

**Sects. 68—74.**

These sections have been repealed by s. 33 of S. C. Jud. Act, 1875, and ss. 16—21 of that Act substituted.

**75.** A council of the Judges of the Supreme Court, of which due notice shall be given to all the said Judges, shall assemble once at least in every year, on such day or days as shall be fixed by the Lord Chancellor, with the concurrence of the Lord Chief Justice of England, for the purpose of considering the operation of this Act and of the Rules of Court for the time being in force, and also the working of the several offices and the arrangements relative to the duties of the officers of the said Courts respectively, and of enquiring and examining into any defects which may appear to exist in the system of procedure or the administration of the law in the said High Court of Justice or the said Court of Appeal, or in any other Court from which any appeal lies to the said High Court or any Judge thereof, or to the said Court of Appeal: And they shall report annually to one of Her Majesty's principal Secretaries of State what (if any) amendments or alterations it would in their judgment be expedient to make in this Act, or otherwise relating to the administration of justice, and what other provisions (if any) which cannot be carried into effect without the authority of Parliament it would be expedient to make for the better administration

#### **Sect. 75.**

Councils of Judges to consider procedure and administration.

**Act 1873,  
ss. 75—77.**

of justice. Any extraordinary council of the said Judges may also at any time be convened by the Lord Chancellor.

**Sect. 76.**  
Acts of Parliament relating to former Courts to be read as applying to Courts under this Act.

**76.** All Acts of Parliament relating to the several Courts and Judges, whose jurisdiction is hereby transferred to the said High Court of Justice and the said Court of Appeal respectively, or wherein any of such Courts or Judges are mentioned or referred to, shall be construed and take effect, so far as relates to anything done or to be done after the commencement of this Act, as if the said High Court of Justice or the said Court of Appeal, and the Judges thereof respectively, as the case may be, had been named therein instead of such Courts or Judges whose jurisdiction is so transferred respectively; and in all cases not hereby expressly provided for in which, under any such Act, the concurrence or the advice or consent of the Judge or any Judges, or of any number of the Judges, of any one or more of the Courts whose jurisdiction is hereby transferred to the High Court of Justice is made necessary to the exercise of any power or authority capable of being exercised after the commencement of this Act, such power or authority may be exercised by and with the concurrence, advice, or consent of the same or a like number of Judges of the said High Court of Justice; and all general and other commissions, issued under the Acts relating to the Central Criminal Court or otherwise, by virtue whereof any Judges of any of the Courts whose jurisdiction is so transferred may, at the commencement of this Act, be empowered to try, hear, or determine any causes or matters, criminal or civil, shall remain and be in full force and effect unless and until they shall respectively be in due course of law revoked or altered.

See *Commissioners of Sewers v. Gellatly*, 3 Ch. D. 610; *Padley v. Camphausen*, 10 Ch. D. 550; *Marris v. Ingram*, 13 Ch. D. 333; *Ex parte Mayor of London*, 25 Ch. D. 384.

## PART V.

### OFFICERS AND OFFICES.

**Sect. 77.**  
Transfer of existing staff of officers to Supreme Court.

**77.** The Queen's Remembrancer, and all masters, secretaries, registrars, clerks of records and writs, associates, prothonotaries, chief and other clerks, commissioners to take oaths or affidavits, messengers, and other officers and assistants at the time of the commencement of this Act attached to any Court or Judge whose jurisdiction is hereby transferred to the High Court, or to the Court of Appeal, and also all registrars, clerks, officers, and other persons at the time of the commencement of this Act engaged in the preparation of commissions or writs, or in the registration of judgments or any other ministerial duties in aid of, or connected with, any Court, the jurisdiction of which is hereby transferred to the said Courts respectively, shall, from and after the commencement of this Act, be attached to the Supreme Court, consisting of the said High Court of Justice and the said Court of Appeal: Provided, that all the duties with respect to appeals from the Court of Chancery of the County Palatine of Lancaster which are now performed by the clerk of the council of the Duchy of Lancaster shall be performed by the registrars, taxing masters, and other officers by whom like



duties are discharged in the Supreme Court; and the said clerk of the council of the Duchy of Lancaster shall not be an officer attached to the said Court. Act 1873,  
ss. 77, 78

The officers so attached shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed; and any such officer who is removable by the Court to which he is now attached, shall be removable by the Court to which he shall be attached under this Act, or by the majority of the Judges thereof.

The existing registrars and clerks to the registrars in the Chancery Registrars' office shall retain any right of succession secured to them by Act of Parliament, so as to entitle them in that office, or in any substituted office, to the succession to appointments with similar or analogous duties, and with equivalent salaries.

The business to be performed in the High Court of Justice and in the Court of Appeal respectively, or in any divisional or other Court thereof, or in the chambers of any Judge thereof, other than that performed by the Judges, shall be distributed among the several officers attached to the Supreme Court by this section in such manner as may be directed by Rules of Court; and such officers shall perform such duties in relation to such business as may be directed by Rules of Court, with this qualification, that the duties required to be performed by any officer shall be the same, or duties analogous to those which he performed previously to the passing of this Act; and, subject to such Rules of Court, all such officers respectively shall continue to perform the same duties, as nearly as may be, in the same manner as if this Act had not passed.

All secretaries, clerks, and other officers attached to any existing Judge who under the provisions of this Act shall become a Judge of the High Court of Justice, or of the Court of Appeal, shall continue attached to such Judge, and shall perform the same duties as those which they have hitherto performed, or duties analogous thereto; and all such last-mentioned officers shall have the same rank and hold their offices by the same tenure, and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed: Provided that the Lord Chancellor may, with the consent of the Treasury, increase the salary of any existing officer whose duties are increased by reason of the passing of this Act.

Upon the occurrence of a vacancy in the office of any officer coming within the provisions of this section, the Lord Chancellor, with the concurrence of the Treasury, may, in the event of such office being considered unnecessary, abolish the same, or may reduce the salary, or alter the designation or duties thereof, notwithstanding that the patronage thereof may be vested in an existing Judge. Nothing in this Act contained shall interfere with the office of marshal attending any Commissioner of Assize.

See S. C. Jud. Act, 1879, ss. 4, 6, 7, *post*, pp. 95, 96; O. LX. and O. LXI., *post*, pp. 454, 455.

**78.** The existing Queen's Counsel of the County Palatine of Lancaster shall for the future have the same precedence in the county. Sect. 78.  
Officers of  
Courts of  
Pleas at Lan-  
caster and  
Durham.

The remainder of this section was repealed by the S. L. Rev. Act, 1883.



Act 1873,  
ss. 79—82.

**Sect. 79.**

Personal  
officers of  
future  
Judges.

**79.** Each of the Judges of the High Court of Justice, and of the ordinary Judges of the Court of Appeal, appointed respectively after the commencement of this Act, and also such of the ordinary Judges of the Court of Appeal as have no similar officers at the time of the commencement of this Act, shall have such officers as hereinafter mentioned, who shall be attached to his person as such Judge, and appointed and removable by him at his pleasure, and who shall respectively receive the salaries hereinafter mentioned (that is to say):

To the Lord Chief Justice of England, the Master of the Rolls, *the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer*, respectively, there shall be attached a secretary, whose salary shall be five hundred pounds per annum, a principal clerk, whose salary shall be four hundred pounds per annum, and a junior clerk, whose salary shall be two hundred pounds per annum. To each of the other Judges of the High Court of Justice, and to each of the ordinary Judges of the Court of Appeal, there shall be attached a principal clerk, whose salary shall be four hundred pounds per annum, and, in the case of the Judges of the High Court of Justice, a junior clerk, whose salary shall be two hundred pounds per annum.

Such one or more of the officers so attached to each of the said Judges, as such Judge shall think fit, shall be required, while in attendance on such Judge, to discharge, without further remuneration, the duties of crier in Court or on circuit, or of usher or train bearer. The duties of chamber clerks, so far as relates to business transacted in chambers by Judges appointed after the commencement of this Act, shall be performed by officers of the Court in the permanent civil service of the Crown.

See S. C. Jud. Act, 1875, s. 35, *post*, p. 82.

Appointments have been made under this section, and the work formerly done by Judges' Chambers' clerks is now done by the Summons and Order Department of the Central Office, to which the Chamber clerks who obtained permanent appointments were attached: see O. LXI., *post*, p. 455.

In furtherance of the circuit arrangements made in June, 1884, the Judges have consented to dispense with junior clerks as vacancies should occur. No fresh junior clerks will be appointed.

**Sect. 80.**

**80.** [*Provisions as to officers paid out of fees.*]

Repealed by the S. L. Rev. Act, 1883.

**Sect. 81.**

Doubts as to  
the status of  
officers to be  
determined  
by rule.

**81.** Where a doubt exists as to the position under this Act of any existing officer attached to any existing Court or Judge affected by this Act, such doubt may be determined by Rules of Court: subject to this proviso, that such Rules of Court shall not alter the tenure of office, rank, pension (if any), or salary of such officer, or require him to perform any duties other than duties analogous to those which he has already performed.

This section gave no power to determine by Rule of Court what persons are or are not officers of the Court. A wider power was accordingly given by s. 24 of S. C. Jud. Act, 1879, *post*, p. 101.

**Sect. 82.**

Powers of

**82.** Every person who at the commencement of this Act shall be

authorized to administer oaths in any of the Courts whose jurisdiction is hereby transferred to the High Court of Justice, shall be a commissioner to administer oaths in all causes and matters whatsoever which may from time to time be depending in the said High Court or in the Court of Appeal.

See O. XXXVIII., rr. 4, 6, *post*, p. 321.

**83.** There shall be attached to the Supreme Court permanent officers to be called official referees, for the trial of such questions as shall under the provisions of this Act be directed to be tried by such referees. The number and the qualifications of the persons to be so appointed from time to time, and the tenure of their offices, shall be determined by the Lord Chancellor, with the concurrence of the presidents of the divisions of the High Court of Justice, or a majority of them (of which majority the Lord Chief Justice of England shall be one), and with the sanction of the Treasury. Such official referees shall perform the duties intrusted to them in such places, whether in London or in the country, as may from time to time be directed or authorized by any order of the said High Court or of the Court of Appeal; and all proper and reasonable travelling expenses incurred by them in the discharge of their duties shall be paid by the Treasury out of moneys to be provided by Parliament.

*Official Referees.*—As to the matters which may be referred to the official referees and the mode of procedure before them, see ss. 56 to 59, *supra*; O. XXXVI., Part VIII., *post*, p. 302, and notes thereto. For forms of orders of references, see App. K. forms Nos. 33, 34, *post*, pp. 620, 621. As to Court fees in proceedings before official referees, see Order as to Court Fees, *post*, p. 676; as to their rota, see O. XXXVI., Part VIII., *post*, p. 302 *et seq.*; as to their salaries, see s. 15 of S. C. Jud. Act, 1879, *post*, p. 99; and as to times of sitting, O. LXIII., r. 16, *post*, p. 467. As to references to official referees, see ss. 9, 10, 11 of S. C. Jud. Act, 1884, *post*, p. 116.

**84.** Subject to the provisions in this Act contained with respect to existing officers of the Courts whose jurisdiction is hereby transferred to the Supreme Court, there shall be attached to the Supreme Court such officers as the Lord Chancellor, with the concurrence of the presidents of the divisions of the High Court of Justice, or the major part of them, of which majority the Lord Chief Justice of England shall be one, and with the sanction of the Treasury, may from time to time determine.

Such of the said several officers respectively as may be thought necessary or proper for the performance of any special duties, with respect either to the Supreme Court generally, or with respect to the High Court of Justice or the Court of Appeal, or with respect to any one of the divisions of the said High Court, or with respect to any particular Judge or Judges of either of the said Courts, may by the same authority, and with the like sanction as aforesaid, be attached to the said respective Courts, divisions, and Judges accordingly.

All officers assigned to perform duties with respect to the Supreme Court generally, or attached to the High Court of Justice or the Court of Appeal, and all commissioners to take oaths or affidavits in the Supreme Court, shall be appointed by the Lord Chancellor.

**Act 1873,  
ss. 82—84.**

Commis-  
sioners to  
administer  
oaths.

**Sect. 83.**

Official  
Referees to be  
appointed.

**Sect. 84.**

Duties, ap-  
pointment,  
and removal  
of officers of  
Supreme  
Court.



Act 1873,  
ss. 84—87.

All officers attached to the Chancery Division of the said High Court, who have been heretofore appointed by the Master of the Rolls, shall continue, while so attached, to be appointed by the Master of the Rolls.

All other officers attached to any division of the said High Court shall be appointed by the president of that division.

All officers attached to any Judge shall be appointed by the Judge to whom they are attached.

Any officer of the Supreme Court (other than such officers attached to the person of a Judge as are hereinbefore declared to be removable by him at his pleasure) may be removed by the person having the right of appointment to the office held by him, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

The authority of the Supreme Court over all or any of its officers may be exercised in and by the said High Court and the said Court of Appeal respectively, and also in the case of officers attached to any division of the High Court by the president of such division, with respect to any duties to be discharged by them respectively.

This section is modified by S. C. Jud. Act, 1879, which created the Central Office. See *post*, p. 95.

**Sect. 85.**      **85.** [*Salaries and pensions of officers.*]

Repealed by S. C. Jud. Act, 1879, s. 29.

**Sect. 86.**

Patronage not  
otherwise  
provided for.

**86.** Subject to the provisions hereinbefore contained, any rights of patronage and other rights or powers incident to any Court, or to the office of any Judge of any Court whose jurisdiction is transferred to the said High Court of Justice, or to the said Court of Appeal, in respect of which rights of patronage or other rights or powers no provision is or shall be otherwise made by or under the authority of this Act, shall be exercised as follows, that is to say: if incident to the office of any existing Judge shall continue to be exercised by such existing Judge during his continuance in office as a Judge of the said High Court or of the Court of Appeal, and after the death, resignation, or removal from office of such existing Judge shall be exercised in such manner as Her Majesty may by Sign Manual direct.

**Sect. 87.**

Solicitors and  
attorneys.

**87.** From and after the commencement of this Act all persons admitted as solicitors, attorneys, or proctors of or by law empowered to practise in any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or the Court of Appeal, shall be called solicitors of the Supreme Court, and shall be entitled to the same privileges and be subject to the same obligations, so far as circumstances will permit, as if this Act had not passed; and all persons who from time to time, if this Act had not passed, would have been entitled to be admitted as solicitors, attorneys, or proctors of or been by law empowered to practise in any such Courts, shall be entitled to be admitted and to be called solicitors of the Supreme Court, and shall be admitted by the Master of the Rolls, and shall, as far as circumstances will permit, be entitled as



such solicitors to the same privileges, and be subject to the same obligations as if this Act had not passed.

Act 1873,  
ss. 87, 88.

Any solicitors, attorneys, or proctors to whom this section applies shall be deemed to be officers of the Supreme Court; and that Court, and the High Court of Justice, and the Court of Appeal respectively, or any division or Judge thereof, may exercise the same jurisdiction in respect of such solicitors or attorneys as any one of Her Majesty's Superior Courts of Law or Equity might previously to the passing of this Act have exercised in respect of any solicitor or attorney admitted to practise therein.

See s. 14 of S. C. Jud. Act, 1875, *post*, p. 73.

Regulations, dated the 2nd of November, 1875, were issued in pursuance of the last-mentioned section. But by the Solicitors Act, 1877 (40 & 41 Vict. c. 25), those regulations ceased to be in force on the 1st Jan. 1878. The making of regulations on the subject is for the future governed by that Act, as modified by s. 24 of S. C. Jud. Act, 1881, *post*, p. 111. Regulations were made under it which came into force on the 1st January, 1878.

*Effect of section.*—The effect of this section was to entitle any person capable of practising in any of the Courts consolidated to form the Supreme Court, to be admitted to practise in any branch of the Supreme Court: *Re Toller*, W. N. (1875), 254; *Crisp v. Martin*, 1 P. D. 302. But it did not authorize any person other than a proctor of the Arches Court to practise in that Court: *Crisp v. Martin*, *ubi supra*. But now, by the Legal Practitioners Act, 1876 (39 & 40 Vict. c. 66), and the Solicitors Act, 1877 (40 & 41 Vict. c. 25), s. 17, solicitors of the Supreme Court may appear as proctors in any ecclesiastical court. By s. 2 of the Legal Practitioners Act, 1877 (40 & 41 Vict. c. 62), surrogates and other unqualified practitioners are forbidden to take instructions for or prepare any papers on which to found or oppose a grant of probate or letters of administration.

*Practice in Chancery Division.*—The jurisdiction under this section will be exercised in the Chancery Division according to the practice familiar to that Division: *Re Copp*, 32 W. R. 25.

*Privilege of solicitor.*—In *Day v. Ward*, 17 Q. B. D. 703, it was held that a solicitor in the High Court who had also been admitted a solicitor in the Mayor's Court, and who was sued in the Mayor's Court, was not entitled to have his action removed into the H. C. on the ground of his privilege to be sued only in the H. C. Section 5 of the County Courts Act, 1867 (*ante*, pp. 50, 51), applies to an action in which a solicitor is plaintiff: *Blair v. Eisler*, 21 Q. B. D. 185.

*Striking off Rolls.*—See *Re Martin*, 24 W. R. 111; *Cave v. Cave*, 49 L. J. Ch. 656; *Re Hardwick*, 12 Q. B. D. 148; *Re Whitehead*, 28 Ch. D. 614. The enactments which deal with the subject of striking off the rolls are 6 & 7 Vict. c. 73, ss. 28—32; 23 & 24 Vict. c. 127, ss. 24, 25; and 37 & 38 Vict. c. 68, ss. 7—11.

## PART VI.

### JURISDICTION OF INFERIOR COURTS.

88. It shall be lawful for Her Majesty from time to time by Order in Council to confer on any Inferior Court of civil jurisdiction, the same jurisdiction in Equity and in Admiralty respectively, as any County Court now has, or may hereafter have, and such jurisdiction, if and when conferred, shall be exercised in the manner by this Act directed.

Sect. 88.

Power by Order in Council to confer jurisdiction on Inferior Courts.

See S. L. Rev. and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), s. 8, *post*, p. 125; S. C. Jud. Act, 1881, s. 27, *post*, p. 113; S. C. Jud. Act, 1884, s. 24, *post*, p. 121.

Act 1873,  
ss. 89, 90.

Sect. 89.

Powers of Inferior Courts having Equity and Admiralty jurisdiction.

**89.** Every Inferior Court which now has or which may after the passing of this Act have jurisdiction in Equity, or at Law and in Equity, and in Admiralty respectively, shall, as regards all causes of action within its jurisdiction for the time being, have power to grant, and shall grant in any proceeding before such Court, such relief, redress, or remedy, or combination of remedies, either absolute or conditional, and shall in every such proceeding give such and the like effect to every ground of defence or counter-claim, equitable or legal (subject to the provision next hereinafter contained), in as full and ample a manner as might and ought to be done in the like case by the High Court of Justice.

*Committal.*—By virtue of this section a County Court can, in an action within its jurisdiction, grant an injunction against a nuisance, and compel obedience thereto by committal: *Martin v. Bannister*, 4 Q. B. D. 491. See, too, *Richards v. Cullerne*, 7 Q. B. D. 623.

*Lord Mayor's Court.*—This section does not give the Judge of the Mayor's Court power to enter judgment on an application for a new trial: *Pryor v. City Offices Co.*, 10 Q. B. D. 504.

*Detinue.*—In an action of detinue brought in a County Court, the County Court Judge has jurisdiction to order delivery of the specific chattel wrongfully detained without giving the defendant the option of paying its assessed value: *Winfield v. Boothroyd*, 54 L. T. 574.

*Administration.*—A County Court has no power to stay proceedings in the High Court in respect of claims provable in an administration action in the County Court: *Cobbold v. Pryke*, 4 Ex. D. 315.

*Interpleader.*—See as to sending interpleaders to the County Courts for trial, s. 17 of S. C. Jud. Act, 1884, *post*, p. 118.

*Agreement by husband and wife to live separate.*—An action for specific performance of such an agreement can be enforced in a County Court: *McGregor v. McGregor*, 57 L. J., Q. B. 268.

Sect. 90.

Counter-claims in Inferior Courts, and transfers therefrom.

**90.** Where in any proceeding before any such Inferior Court any defence or counter-claim of the defendant involves matter beyond the jurisdiction of the Court, such defence or counter-claim shall not affect the competence or the duty of the Court to dispose of the whole matter in controversy so far as relates to the demand of the plaintiff and the defence thereto, but no relief exceeding that which the Court has jurisdiction to administer shall be given to the defendant upon any such counter-claim: Provided always, that in such case it shall be lawful for the High Court, or any division or Judge thereof, if it shall be thought fit, on the application of any party to the proceeding, to order that the whole proceeding be transferred from such Inferior Court to the High Court, or to any division thereof; and in such case the record in such proceeding shall be transmitted by the registrar, or other proper officer, of the Inferior Court to the said High Court; and the same shall thenceforth be continued and prosecuted in the said High Court as if it had been originally commenced therein.

The jurisdiction of an Inferior Court in cases of counter-claim was extended by s. 18 of S. C. Jud. Act, 1884. See *post*, p. 118. That section alters the effect of the decision in *Davis v. Flagstaff Mining Co.*, 3 C. P. D. 228. As to the wide meaning to be given to the word "defence" in s. 90, see per Thesiger, L. J., *ibid.*, at p. 242.

*Transfer to High Court.*—An application under s. 90 to transfer proceedings from a County Court to the High Court must not be made *ex parte*, but by summons: *Anon.*, W. N. (1876), 12, Lindley, J. When an action is transferred to the High Court, the practice of that Court must be followed: *Davis v. Williams*, 13 Ch. D. 550.



**91.** The several Rules of law enacted and declared by this Act shall be in force and receive effect in all Courts whatsoever in England, so far as the matters to which such Rules relate shall be respectively cognizable by such Courts.

Act 1873,  
ss. 91—94.

Sect. 91.

Rules of law  
to apply to  
Inferior  
Courts.

See s. 25, *supra*, and notes thereto. In *King v. Hawksworth*, 4 Q. B. D. 371, it was held that by virtue of this section the order as to costs applied to proceedings in the Liverpool Passage Court. The attention of the Court does not seem to have been called to the terms of s. 17 of S. C. Jud. Act, 1875, under which power is given to regulate the costs of proceedings in the Supreme Court by Rules of Court. If it were not for this decision, it would have seemed clear that the intention of this section was merely to apply to inferior Courts the rules of law enacted by s. 25; and see *Pryor v. City Offices Co.*, 10 Q. B. D. 504. The last-named decision and this section were elaborately reviewed by Mr. Justice Wills in the case of *Speers v. Daggers*, 1 Cab. & Ell. 503.

## PART VII.

### MISCELLANEOUS PROVISIONS.

**92.** All books, documents, papers, and chattels in the possession of any Court, the jurisdiction of which is hereby transferred to the High Court of Justice or to the Court of Appeal, or of any officer or person attached to any such Court, as such officer, or by reason of his being so attached, shall be transferred to the Supreme Court, and shall be dealt with by such officer or person in such manner as the High Court of Justice or the Court of Appeal may by order direct; and any person failing to comply with any order made for the purpose of giving effect to this section shall be guilty of a contempt of the Supreme Court.

Sect. 92.

Transfer of  
books and  
papers to  
Supreme  
Court.

**93.** This Act, except as herein is expressly directed, shall not, unless or until other commissions are issued in pursuance thereof, affect the circuits of the Judges or the issue of any Commissions of Assize, Nisi Prius, Oyer and Terminer, Gaol Delivery, or other commissions for the discharge of civil or criminal business on circuit or otherwise, or any patronage vested in any Judges going circuit, or the position, salaries, or duties of any officers transferred to the Supreme Court who are now officers of the Superior Courts of Common Law, and who perform duties in relation to either the civil or criminal business transacted on circuit.

Sect. 93.

Saving as to  
circuits, &c.

By s. 23 of S. C. Jud. Act, 1875, *post*, p. 77, power is given to the Queen in Council to alter the existing circuits and make the necessary changes incidental thereto. See Orders in Council, 5th February, 1876; 17th May, 1876; 26th June, 1884. As to winter assizes, see Winter Assizes Acts, 1876 and 1877; Order in Council, 10th August, 1888. As to spring assizes, see the Spring Assizes Act, 1879. See also note to s. 29, *ante*, p. 30.

See s. 21 of S. C. Jud. Act, 1884, as to the patronage of Judges with respect to circuit appointments.

As to the Counties Palatine, see s. 99, *infra*.

**94.** This Act, except so far as herein is expressly directed, shall not affect the office or position of Lord Chancellor; and the officers of the Lord Chancellor shall continue attached to him in the same

Sect. 94.

Saving as to  
Lord Chan-  
cellor.



**Act 1873,  
ss. 94—100.**

manner as if this Act had not passed; and all duties, which any officer of the Court of Chancery may now be required to perform in aid of any duty whatsoever of the Lord Chancellor, may in like manner be required to be performed by such officer when transferred to the Supreme Court, and by his successors.

**Sect. 95.**

Saving as to  
Chancellor of  
Lancaster.

**95.** This Act, except so far as is herein expressly directed, shall not affect the offices, position, or functions of the Chancellor of the County Palatine of Lancaster.

See ss. 16, 18, 77, 78, *supra*.

**Sect. 96.**

Saving as to  
Chancellor of  
the Exche-  
quer, and  
sheriffs.

**96.** The Chancellor of the Exchequer shall not be a Judge of the High Court of Justice, or of the Court of Appeal, and shall cease to exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; but save as aforesaid he shall remain in the same position as to duties and salary, and other incidents of his office, as if this Act had not passed. *The same order and course with respect to the appointment of sheriffs shall be used and observed in the Exchequer Division of the said High Court as has been heretofore used and observed in the Court of Exchequer.*

The paragraph printed in italics was repealed by S. L. Rev. Act, 1883. See S. C. Jud. Act, 1881, s. 16, *post*, p. 109.

**Sect. 97.**

Saving as to  
Lord Treas-  
urer and  
office of the  
Receipt of  
Exchequer.

**97.** Nothing in this Act contained shall affect the office of Lord Treasurer, except that any Lord Treasurer shall not hereafter exercise any judicial functions hitherto exercised by him as a Judge of the Court of Exchequer; and nothing in this Act shall affect the office of the Receipt of the Exchequer.

**Sect. 98.**

Provisions as  
to great seal  
being in com-  
mission.

**98.** When the great seal is in commission, the Lords Commissioners shall represent the Lord Chancellor for the purposes of this Act, save that as to the Presidency of the Court of Appeal, and the appointment or approval of officers, or the sanction to any order for the removal of officers, or any other act to which the concurrence or presence of the Lord Chancellor is hereby made necessary, the powers given to the Lord Chancellor by this Act may be exercised by the Senior Lord Commissioner for the time being.

As to the great seal being in commission, and powers of the commissioners, see 1 Will. & Mar. c. 21, and O. LXXII., r. 3, *post*, p. 515.

**Sect. 99.**

Provision as  
to Commis-  
sions in  
Counties  
Palatine.

**99.** From and after the commencement of this Act, the Counties Palatine of Lancaster and Durham shall respectively cease to be Counties Palatine, so far as respects the issue of Commissions of Assize, or other like Commissions, but not further or otherwise; and all such Commissions may be issued for the trial of all causes and matters within such counties respectively in the same manner in all respects as in any other counties of England and Wales.

**Sect. 100.**

Interpreta-  
tion of terms.

**100.** In the construction of this Act, unless there is anything in the subject or context repugnant thereto, the several words hereinafter mentioned shall have, or include, the meanings following (that is to say):

"Lord Chancellor" shall include Lord Keeper of the Great Seal.

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s. 100.

"The High Court of Chancery" shall include the Lord Chancellor.

"The Court of Appeal in Chancery" shall include the Lord Chancellor as a Judge on rehearing or appeal.

"*London Court of Bankruptcy*" shall include the Chief Judge in Bankruptcy.

Repealed by S. L. Rev. Act, 1883.

"The Treasury" shall mean the Commissioners of Her Majesty's Treasury for the time being, or any two of them.

"Rules of Court" shall include forms.

"Cause" shall include any action, suit, or other original proceeding between a plaintiff and a defendant, and any criminal proceeding by the Crown.

"Suit" shall include action.

"Action" shall mean a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and shall not include a criminal proceeding by the Crown.

See also O. I., r. 1, *post*, p. 128†, and *A.-G. v. Shrewsbury Bridge Co.*, 42 L. T. 79, where it was held that in an action by the Attorney-General at the relation of the plaintiffs, the title "information" is no longer necessary. "Action" includes proceedings commenced by an originating summons: *Re Fawcitt*, 30 Ch. D. 231; *Re Vardon's Trusts*, 55 L. J., Ch. 259. An interpleader issue is not an action within this definition: *Hamlyn v. Betteley*, 6 Q. B. D. 63.

"Plaintiff" shall include every person asking any relief (otherwise than by way of counter-claim as a defendant) against any other person by any form of proceeding, whether the same be taken by action, suit, petition, motion, summons, or otherwise.

"Petitioner" shall include every person making any application to the Court, either by petition, motion, or summons, otherwise than as against any defendant.

"Defendant" shall include every person served with any writ of summons or process, or served with notice of, or entitled to attend any proceedings.

This definition does not include a "third party": *Eden v. Weardale Co.* (1), 28 Ch. D. 333; but an order may be made as regards the person who is brought in as a third party, which puts him, as between himself and the plaintiff, in the position of being defendant in the action, the plaintiff being the person who is claiming as against him: *Eden v. Weardale Co.* (2), 35 Ch. D. 287, at p. 291, per Cotton, L. J.

"Party" shall include every person served with notice of, or attending any proceeding, although not named on the record.

A next friend is not a party: *Re Corsellis*, 31 W. R. 414; *Dyke v. Stephens*, 50 Ch. D. 189; nor a guardian *ad litem*: *Ingram v. Little*, 11 Q. B. D. 251.

"Matter" shall include every proceeding in the Court not in a cause.

"Pleading" shall include any petition or summons, and also shall include the statements in writing of the claim or

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demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant.

A writ specially indorsed under O. III., r. 6, is not a pleading: *Veale v. Automatic Boiler Feeder Co.*, 18 Q. B. D. 631; *Murray v. Stephenson*, 19 Q. B. D. 60. See, however, *Anlaby v. Prætorius*, 20 Q. B. D. 764.

“Judgment” shall include decree.

“Order” shall include rule.

“Oath” shall include solemn affirmation and statutory declaration.

“Crown Cases Reserved” shall mean such questions of law reserved in criminal trials as are mentioned in the Act of the eleventh and twelfth years of Her Majesty’s reign, chapter seventy-eight.

“Pension” shall include retirement and superannuation allowance.

“Existing” shall mean existing at the time appointed for the commencement of this Act.

By O. LXXI., *post*, p. 514, these interpretations are made to apply to the Rules.



# SUPREME COURT OF JUDICATURE ACT, 1875

(38 & 39 VICT. c. 77).

[NOTE.—The sections and parts of sections in *Italic type*, or the effect of which is given between brackets, in *Italic type*, have been repealed.]

An Act to amend and extend the Supreme Court of Judicature Act, 1873.

Act 1875,  
ss. 1—3.

[11th August, 1875.]

WHEREAS it is expedient to amend and extend the Supreme Court of Judicature Act, 1873;

Be it therefore enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Act, 1873 (in this Act referred to as the principal Act), and together with the principal Act may be cited as the Supreme Court of Judicature Acts, 1873 and 1875, and this Act may be cited separately as the Supreme Court of Judicature Act, 1875.

Sect. 1.  
Short title, and  
construction  
with 36 & 37  
Vict. c. 66.

2. This Act, except any provision thereof which is declared to take effect before the commencement of this Act, shall commence and come into operation on the 1st day of November, 1875.

Sect. 2.  
Commence-  
ment of Act.

[Sections 20, 21 and 55 of *S. C. Jud. Act*, 1873, not to come into operation till Nov. 1, 1876.]

This part of the section was repealed by App. Jur. Act, 1876, s. 24.

3. [Explanation of 36 & 37 *Vict. c. 66*, s. 5, as to number of Judges.]

Sect. 3.

The Lord Chancellor shall not be deemed to be a permanent Judge of that Court, and the provisions of the said section relating to the appointment *and style* of the Judges of the said High Court shall not apply to the Lord Chancellor.

The rest of the section, and the words "and style" above, were repealed by *S. L. Rev. Act*, 1883.

Act 1875,  
s. 4.

Sect. 4.  
Constitution  
of Court of  
Appeal.

4. Her Majesty's Court of Appeal, in this Act and in the principal Act referred to as the Court of Appeal, shall be constituted as follows: There shall be five *ex-officio* Judges thereof, and also so many ordinary Judges *not exceeding three at any one time*, as Her Majesty shall from time to time appoint.

The *ex-officio* Judges shall be the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the *Lord Chief Justice of the Common Pleas*, and the *Lord Chief Baron of the Exchequer*.

The first ordinary Judges of the said Court shall be the present Lords Justices of Appeal in Chancery, and such one other person as Her Majesty may be pleased to appoint by Letters Patent. Such appointment may be made either before or after the commencement of this Act, but if made before shall take effect at the commencement of the Act.

*The ordinary Judges of the Court of Appeal shall be styled Justices of Appeal.*

The Lord Chancellor may, by writing, addressed to the President of any one or more of the following divisions of the High Court of Justice, that is to say, the Queen's Bench Division, the *Common Pleas Division*, the *Exchequer Division*, and the Probate Divorce and Admiralty Division, request the attendance at any time, except during the times of the spring or summer circuits, of an additional Judge from such division or divisions (not being *ex-officio* Judge or Judges of the Court of Appeal), at the sittings of the Court of Appeal, and a Judge, to be selected by the division from which his attendance is requested, shall attend accordingly.

Every additional Judge, during the time that he attends the sittings of Her Majesty's Court of Appeal, shall have all the jurisdiction and powers of a Judge of the said Court of Appeal, but he shall not otherwise be deemed to be a Judge of the said Court, or to have ceased to be a Judge of the Division of the High Court of Justice to which he belongs.

*Section fifty-four of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect:* No Judge of the said Court of Appeal shall sit as a Judge on the hearing of an appeal from any judgment or order made by himself, or made by any Divisional Court of the High Court of which he was and is a member.

Whenever the office of an ordinary Judge of the Court of Appeal becomes vacant a new Judge may be appointed thereto by Her Majesty by Letters Patent.

*Statutory provisions as to Judges of Appeal.*—By s. 4 of the Great Seal Act, 1880 (43 & 44 Vict. c. 10), the mode of passing Letters Patent for the appointment of Judges of the Court of Appeal is prescribed as follows:—

S. 4. "Whereas by the Supreme Court of Judicature Act, 1875, and the Appellate Jurisdiction Act, 1876, ordinary Judges of Her Majesty's Court of Appeal are to be appointed by Her Majesty by Letters Patent, but no provision is made respecting the mode of passing such Letters Patent: Be it therefore enacted as follows:

"The Letters Patent for appointing an ordinary Judge of Her Majesty's Court of Appeal shall be passed in the same manner in which Letters Patent for appointing the Judges of Her Majesty's High Court of Justice are passed under the Great Seal."

The words in this section, limiting the number of ordinary Judges of the Court of Appeal to three were repealed by s. 15 of App. Jur. Act, 1876, *post*, p. 87. That section fixes the limit at six.

By s. 2 of S. C. Jud. Act, 1881, *post*, p. 104, the Master of the Rolls is made a Judge of Appeal only, and by s. 3 an existing vacancy is not to be filled up, and the number of ordinary Judges of the Court of Appeal is henceforth to be five; and by s. 4 the President of the Probate, &c. Division is made an *ex officio* member of the Court of Appeal. S. 3 of S. C. Jud. Act, 1884, regulates the precedence in the Court of Appeal of the President of the Probate &c. Division.

Act 1875,  
ss. 4—7.

By s. 19 of App. Jur. Act, 1873, *post*, p. 90, it is provided that, "where a Judge of the High Court of Justice has been requested to attend as an additional Judge at the sittings of the Court of Appeal under s. 4 of the Supreme Court of Judicature Act, 1873 (*sic*), such Judge shall, although the period has expired during which his attendance was requested, attend the sittings of the Court of Appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the Court of Appeal during his attendance on the Court of Appeal."

By s. 4 of S. C. Jud. Act, 1877, *post*, p. 94, the style of the ordinary Judges of the Court of Appeal is "Lords Justices of Appeal."

By s. 11 of S. C. Jud. Act, 1881, *post*, p. 107, a Judge who was not present and acting as a member of a Divisional Court whose judgment is appealed from is not to be deemed a member of that Court for the purposes of this section. See *Fisher v. Val Travers Asphalt Co.*, 1 C. P. D. 259.

*Jurisdiction of the Court of Appeal.*—See ss. 18 and 19 of the principal Act, *ante*, pp. 9, 10, and notes thereto.

*Practice on Appeals.*—See O. LVIII., *post*, p. 434, and notes thereto.

5. All the Judges of the High Court of Justice, and of the Court of Appeal respectively, with the exception of the Lord Chancellor, shall hold their offices as such Judges respectively during good behaviour, subject to a power of removal by Her Majesty, on an address presented to Her Majesty by both Houses of Parliament. No Judge of either of the said Courts shall be capable of being elected to or of sitting in the House of Commons. Every person appointed after the passing of this Act to be Judge of either of the said Courts (other than the Lord Chancellor), when he enters on the execution of his office, shall take, in the presence of the Lord Chancellor, the oath of allegiance, and judicial oath as defined by the Promissory Oaths Act, 1868. The oaths to be taken by the Lord Chancellor shall be the same as heretofore.

Sect. 5.

Tenure of office of Judges, and oaths of office. Judges not to sit in the House of Commons.

6. The Lord Chancellor shall be President of the Court of Appeal; the other *ex-officio* Judges of the Court of Appeal shall rank in the order of their present respective official precedence. The ordinary Judges of the Court of Appeal, if not entitled to precedence as Peers or Privy Councillors, shall rank according to the priority of their respective appointments as such Judges.

Sect. 6.

Precedence of Judges.

The Judges of the High Court of Justice who are not also Judges of the Court of Appeal shall rank next after the Judges of the Court of Appeal, and, among themselves (subject to the provisions in the principal Act contained as to existing Judges), according to the priority of their respective appointments.

See s. 3 of S. C. Jud. Act, 1884, *post*, p. 114, as to the precedence in the Court of Appeal of the President of the Probate Divorce and Admiralty Division.

7. Any jurisdiction usually vested in the Lords Justices of Appeal in Chancery, or either of them, in relation to the persons and estates of idiots, lunatics, and persons of unsound mind, shall be exercised by such Judge or Judges of the High Court of Justice or Court of Appeal as may be intrusted by the sign manual of Her

Sect. 7.

Jurisdiction of Lords Justices in respect of lunatics.



Act 1875,  
ss. 7, 8.

Majesty or her successors with the care and commitment of the custody of such persons and estates; and all enactments referring to the Lords Justices as so intrusted shall be construed as if such Judge or Judges so intrusted had been named therein instead of such Lords Justices: Provided that each of the persons who may at the commencement of the principal Act be Lords Justices of Appeal in Chancery shall, during such time as he continues to be a Judge of the Court of Appeal, and is intrusted as aforesaid, retain the jurisdiction vested in him in relation to such persons and estates as aforesaid.

See s. 17 of S. C. Jud. Act, 1873, *ante*, p. 8.

Sect. 8.  
Admiralty  
Judges and  
registrar.

8. Whereas, by section eleven of the principal Act, it is provided as follows: "Every existing Judge who is by this Act made a Judge of the High Court of Justice or an ordinary Judge of the Court of Appeal shall, as to tenure of office, rank, title, salary, pension, patronage, and powers of appointment or dismissal, and all other privileges and disqualifications, remain in the same condition as if this Act had not passed; and, subject to the change effected in their jurisdiction and duties by or in pursuance of the provisions of this Act, each of the said existing Judges shall be capable of performing and liable to perform all duties which he would have been capable of performing or liable to perform in pursuance of any Act of Parliament, law, or custom, if this Act had not passed. No Judge appointed before the passing of this Act shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery, unless he was so liable by usage or custom at the commencement of this Act:"

And whereas the Judge of the High Court of Admiralty is by the principal Act appointed a Judge of the High Court of Justice:

And whereas such Judge is, as to salary and pension, inferior in position to the other puisne Judges of the superior Courts of common law, but holds certain ecclesiastical and other offices, in addition to the office of Judge of the High Court of Admiralty:

And whereas it is expedient that such Judge, if he be willing to relinquish such other offices, should be placed in the same position as to rank, salary, and pension, as the other puisne Judges of the superior Courts of common law:

Be it enacted that—

[*Provision with regard to then existing Judge of High Court of Admiralty.*]

This provision was repealed by S. L. Rev. Act, 1883.

The present holder of the office of registrar of Her Majesty in Ecclesiastical and Admiralty causes shall, as respects any appeals in which he would otherwise be concerned coming within the cognizance of the Court of Appeal, be deemed to be an officer attached to the Supreme Court; and the office, so far as respects the duties in relation to such appeals as aforesaid, shall be deemed to be a separate office within the meaning of section seventy-seven of the principal Act, and may be dealt with accordingly. [*Provision entitling the registrar in Ecclesiastical and Admiralty causes to prefer claim to Treasury in case of loss of emoluments.*]

This provision was repealed by S. L. Rev. Act, 1883.

Subject as aforesaid, the person who is, at the time of the passing of this Act, registrar of Her Majesty in Ecclesiastical and Admiralty causes, shall, notwithstanding anything in the principal Act or this Act, have the same rank and hold his office upon the same tenure and upon the same terms and conditions as heretofore; but it shall be lawful for Her Majesty, by Order in Council made upon the recommendation of the Lord Chancellor, with the concurrence of the Treasury, to make, notwithstanding anything contained in any Act of Parliament, such arrangements with respect to the duties of the said last-mentioned office, either by abolition thereof or otherwise, as to Her Majesty may seem expedient: *Provided that such Order shall not take effect during the continuance in such office of the said person so being registrar at the time of the passing of this Act, without his assent.*

Act 1875,  
ss. 8—10.

Every Judge of the Probate Divorce and Admiralty Division of the said High Court of Justice appointed after the passing of this Act shall, so far as the state of business in the said Division will admit, share with the Judges mentioned in section thirty-seven of the principal Act the duty of holding sittings for trials by jury in London and Middlesex, and sittings under commissions of assize, oyer and terminer, and gaol delivery.

See s. 11 of S. C. Jud. Act, 1873, *ante*, p. 4.

**9.** [*London Court of Bankruptcy not to be transferred to High Court of Justice.*]

Sect. 9.

This section was repealed as from the 1st of January, 1884, by the Bankruptcy Act, 1883, by which the London Bankruptcy Court became part of the Supreme Court.

**10.** Whereas, by section twenty-five of the principal Act, after reciting that it is expedient to amend and declare the law to be thereafter administered in England as to the matters next thereafter mentioned, certain enactments are made with respect to the law, and it is expedient to amend the said section: Be it therefore enacted as follows:

Sect. 10.

Amendment of 36 & 37 Vict. c. 66, s. 25, as to rules of law upon certain points, administration and winding-up proceedings.

Sub-section one of clause twenty-five of the principal Act is hereby repealed, and instead thereof the following enactment shall take effect; (that is to say,) in the administration by the Court of the assets of any person who may die after the commencement of this Act, and whose estate may prove to be insufficient for the payment in full of his debts and liabilities, and in the winding up of any company under the Companies Acts, 1862 and 1867, whose assets may prove to be insufficient for the payment of its debts and liabilities and the costs of winding up, the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors, and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities respectively, as may be in force for the time being under the law of bankruptcy with respect to the estates of persons adjudged bankrupt; and all persons who in any such case would be entitled to prove for and receive dividends out of the estate of any such deceased person, or out of the assets of any such company, may come in under the decree or order for the administration of such estate, or under the winding up of such company, and make such claims against the same as they may respectively be entitled to by virtue of this Act.



Act 1875,  
s. 10.

In sub-section seven of the said section the reference to the date of the passing of the principal Act shall be deemed to refer to the date of the commencement of the principal Act.

This section, which supersedes sub-s. 1 of s. 25 of S. C. Jud. Act of 1873, came into force on the 1st November, 1875. It is not retrospective in its operation: *Re Joseph Suche & Co.*, 1 Ch. D. 48; *Sherwin v. Selkirk*, 12 Ch. D. 68.

*Effect of section.*—The section deals with two distinct subjects, namely, the administration of the estates of deceased persons dying insolvent, and proceedings for the winding-up of insolvent companies, but, for the most part, the same considerations apply to them both.

Before this section came into force, the rule in administration and winding-up proceedings was that a secured creditor was entitled to prove for the full amount of his debt and not merely for the balance after realizing or valuing his security: *Mason v. Bogg*, 2 My. & Cr. 443; *Kellock's Case*, 3 Ch. 769. But now that the bankruptcy rule is applied he can only prove for the balance: *Re Withernsea Brick Works*, 16 Ch. D. 337, at p. 343. "It is not the rules that were in force when the Act of 1875 was passed, but the rules which 'may be in force for the time being.'" See judgment of Ld. Selborne in *Mersey Steel Co. v. Naylor*, 9 App. Cas. 434, at p. 437. It was said by Jessel, M.R., in *Re Albion Steel Co.*, 7 Ch. D. 547, at p. 549, that the right construction of the section is nothing more than that persons may, in the winding-up of a company, make such claims against the assets of the company as are provable under the law of bankruptcy: and see *Re West of England Bank*, 12 Ch. D. 823, at p. 825. It was not the object of the section to enlarge the scope of the assets to be administered: *Re D'Epineuil*, 20 Ch. D. 217; *Re Crumlin Viaduct Works Co.*, 11 Ch. D. 755; *Gorringe v. Irwell Co.*, 34 Ch. D. 128.

*Secured creditor.*—See *Ex parte Joselyne*, 8 Ch. D. 327; *Ex parte Nelson*, 14 Ch. D. 41. A garnishee order nisi does not create a security until it has been served: *Re Stanhope Collieries Co.*, 11 Ch. D. 160.

#### CASES WHERE SECTION HAS BEEN HELD TO APPLY:—

*Contingent liabilities.*—See *Re Bridges*, 17 Ch. D. 342.

The section imports the provisions of Bankruptcy law, which enable a creditor to prove in respect of a liability existing at the time of the commencement of the bankruptcy, and which ripens into a debt during the bankruptcy. Therefore the holder of a fire policy was allowed to prove for the full amount of the policy against the company which was being wound up, although the fire took place after the winding-up order had been made: *Re Northern Counties Insurance Co.*, 17 Ch. D. 337.

*Mutual credit and set-off.*—See *Mersey Co. v. Naylor & Co.*, 9 App. Cas. 434; *Green v. Smith*, 22 Ch. D. 586 (mutual credit rule not applicable until estate proved to be insolvent).

*Valuation when a secured creditor seeks to prove for a balance.*—See *Re Hopkins*, 18 Ch. D. 370; but see *Re Carmarthenshire Coal Co.*, 45 L. J., Ch. 200, and *Re Kit Hill Tunnel*, 16 Ch. D. 590.

*Priority of wages of clerks or servants.*—It has been decided that the bankruptcy law, which gives priority to wages of clerks or servants over other debts, is imported into winding-up proceedings: *Re Association of Land Financiers*, 16 Ch. D. 373. See, now, s. 4 of the Companies Act, 1883, which was apparently intended to assimilate the law on this point in cases of bankruptcy and winding-up. This section, however, gives priority to the wages of a labourer or workman in respect of services during two months before the commencement of the winding-up, whilst under s. 40 of the Bankruptcy Act, 1883, the period is four months.

In a case of *Re Williams* (not reported), Jessel, M.R., in Chambers, held that wages are not entitled to priority in the administration of insolvent estates.

#### CASES WHERE SECTION HAS BEEN HELD NOT TO APPLY:—

*Rates and taxes.*—It was held by Malins, V.-C., in *Re Regent United Service Stores*, 38 L. T. 130 (reversed on appeal on another ground, 8 Ch. D. 616), and by Jessel, M.R., in *Re Albion Steel and Wire Co.*, 7 Ch. D. 547, that the Bankruptcy law, which gives priority to Queen's taxes and parochial and other rates over other debts, is not imported into administration and winding-up proceedings.



Act 1875,  
s. 10.

*Prerogative of Crown.*—It was held in *Re Henley*, 9 Ch. D. 469, that the Crown was not bound by the Companies Act, 1862, and had a right to payment in full of a debt due from the company for property tax in priority to the other creditors; and in *Re Oriental Bank Co.*, 28 Ch. D. 643, it was held that the provisions of the Bankruptcy Act, 1883, taking away the priority of the Crown over other creditors in the distribution of assets, did not apply in the case of a winding-up.

*Provisions of Bankruptcy law not imported.*—This section does not import into winding-up proceedings the provisions of Bankruptcy law relating to petitioning creditors: *Moor v. Anglo-Italian Bank*, 10 Ch. D. 681; nor the provisions as to the landlord's right of distress for one year's rent, for the landlord is not a secured creditor: *Thomas v. Patent Lionite Co.*, 17 Ch. D. 250; *Re Fryman*, 38 Ch. D. 468. Nor the provisions as to the sheriff holding for fourteen days the proceeds of goods taken in execution: *Re Withernsea Brick Works*, 16 Ch. D. 337; approving *Re Richards*, 11 Ch. D. 676; and overruling *Re Printing and Numerical Co.*, 8 Ch. D. 535; nor the power of disclaimer given by Bankruptcy law: *In re Westbourne Grove Drapery Co.*, 5 Ch. D. 248; nor the rules in bankruptcy as to reputed ownership and fraudulent preference: *Re Crumlin Fiaeduct Works Co.*, 11 Ch. D. 755; *Gorringe v. Irwell Co.*, 34 Ch. D. 128.

*Calls on shareholders.*—It appears from the decisions in *Gill's Case*, 12 Ch. D. 755; *Re Whitehouse*, 9 Ch. D. 595, and *Ex parte Bramwhite*, 48 L. J., Ch. 463, that the mutual credit rules do not apply to the case of calls on shareholders. See, *contra*, *Brighton Arcade Co. v. Dowling*, L. R., 3 C. P. 175. See, as to summary judgment in an action for calls, *Government, &c. Co. v. Dempsey*, 50 L. J., Q. B. 199, a case which, however, the Court of Appeal refused to follow, holding that the question as to a shareholder's right to set off a debt due to him from the company was still an open one: *British Insulite Co. v. Levi*, July, 1884 (not reported).

*Creditor shareholder.*—This section does not affect the rule in winding-up entitling a creditor who is also a shareholder in the company to receive a dividend on his debt if he has paid all calls made when the dividend was declared: *Re West of England Bank*, 12 Ch. D. 823.

*Seizure by judgment creditor.*—The discretion given to the Court by s. 87 of the Companies Act, 1862, to permit a judgment creditor who has seized, but has not realized, at the date of the winding-up order, to proceed with his execution, is not affected by this section: *Re Taylor*, 8 Ch. D. 183.

*Executor's right of retainer.*—The section does not affect an executor's right of retainer: *Lee v. Nuttall*, 12 Ch. D. 61.

*Priority of creditors.*—The section does not affect the right of a judgment creditor to priority in the administration of assets: *Smith v. Morgan*, 5 C. P. D. 337; *Re Maggi*, 20 Ch. D. 545; nor does it affect the right of priority given to trustees of a savings bank by virtue of s. 14 of the Savings Bank Act, 1863, in the administration of the estate of a deceased person in the Chancery Division, though in bankruptcy such right would seem to be taken away by s. 40 of the Bankruptcy Act, 1883: *Re Williams*, 36 Ch. D. 573.

*Unregistered bill of sale.*—The section does not apply to administration proceedings the bankruptcy rules as to the effect of non-registration of bills of sale: *Re Knott*, 7 Ch. D. 549; *Re D'Epineuil*, 20 Ch. D. 217.

*Interest.*—Under this section judgment for administration is equivalent to adjudication in bankruptcy, and therefore a creditor whose debt bears interest is entitled only to interest up to the date of judgment, and not up to the date of payment: *Re Summers*, 13 Ch. D. 136. A secured creditor is entitled to apply the proceeds of his security first in payment of interest and then in payment of principal due to him, and to prove against the estate for any balance which may remain due, but without interest on that balance: *Re Talbot*, W. N. (1888), 186.

*Form of administration order.*—See *Re Hildich*, 29 W. R. 733; *contra*, *Re Murray*, 30 W. R. 283.

*Administration in Bankruptcy.*—By s. 125 of the Bankruptcy Act, 1883, the estate of a person dying insolvent may now be wound up in bankruptcy. As to transfer of proceedings for administration to the Bankruptcy Court, see *Ibid.*; *Senhouse v. Maconson*, 52 L. T. 745; *Re Weaver*, 29 Ch. D. 236; *Re May*, 13 Q. B. D. 552; *Re York*, 36 Ch. D. 233. The provisions of Bankruptcy law as to avoidance of settlements do not apply to cases transferred under the above section: *Re Gould*, 19 Q. B. D. 92. An order obtained in the Chancery

**Act 1875,  
ss. 10—12.**

Division by a creditor for administration of a deceased debtor's estate, not followed by any proceedings in bankruptcy, is not equivalent to an "order of adjudication," within s. 42, so as to limit the power of a person to whom rent is due from the estate to recover by distress one year's rent only: *Re Fryman*, 38 Ch. D. 468.

**Sect. 11.**

Provision as to option for any plaintiff (subject to rules) to choose in what division he will sue—in substitution for 36 & 37 Vict. c. 66, s. 35.

**11.** Subject to any Rules of Court and to the provisions of the principal Act and this Act and to the power of transfer, every person by whom any cause or matter may be commenced in the said High Court of Justice shall assign such cause or matter to one of the divisions of the said High Court as he may think fit, by marking the document by which the same is commenced with the name of such division, and giving notice thereof to the proper officer of the Court; Provided that—

- (1.) All interlocutory and other steps and proceedings in or before the said High Court in any cause or matter subsequent to the commencement thereof, shall be taken (subject to any Rules of Court and to the power of transfer) in the division of the said High Court to which such cause or matter is for the time being attached; and
- (2.) If any plaintiff or petitioner shall at any time assign his cause or matter to any division of the said High Court to which, according to the Rules of Court or the provisions of the principal Act or this Act, the same ought not to be assigned, the Court, or any Judge of such division, upon being informed thereof, may, on a summary application at any stage of the cause or matter, direct the same to be transferred to the division of the said Court to which, according to such rules or provisions, the same ought to have been assigned, or he may, if he think it expedient so to do, retain the same in the division in which the same was commenced; and all steps and proceedings whatsoever taken by the plaintiff or petitioner, or by any other party in any such cause or matter, and all orders made therein by the Court or any Judge thereof before any such transfer shall be valid and effectual to all intents and purposes in the same manner as if the same respectively had been taken and made in the proper division of the said Court to which such cause or matter ought to have been assigned; and
- (3.) Subject to Rules of Court, a person commencing any cause or matter shall not assign the same to the Probate Divorce and Admiralty Division, unless he would have been entitled to commence the same in the Court of Probate, or in the Court for Divorce and Matrimonial causes, or in the High Court of Admiralty, if this Act had not passed.

See as to choice of Division, O. V. Part II., *post*, p. 137, and note thereto. As to transfer, see O. XLIX. *post*, p. 367. As to the assignment of particular subjects to particular divisions of the High Court, see s. 34 of S. C. Jud. Act, 1873, *ante*, p. 33. See also s. 16, *ante*, p. 6, and notes thereto.

**Sect. 12.**

Sittings of Court of Appeal.

**12.** Every appeal to the Court of Appeal shall, where the subject-matter of the appeal is a final order, decree, or judgment, be heard before not less than three Judges of the said Court sitting together, and shall, when the subject-matter of the appeal is an interlocutory order, decree, or judgment, be heard before not less than two Judges of the said Court sitting together.



Any doubt which may arise as to what decrees, orders, or judgments are final, and what are interlocutory, shall be determined by the Court of Appeal.

Act 1875,  
ss. 12—14.

Subject to the provisions contained in this section the Court of Appeal may sit in two divisions at the same time.

Interlocutory  
or final orders.

By S. C. Jud. Act, 1873, s. 100, "order" includes rule.

*Jurisdiction of the C. A.*—See ss. 18 and 19 of S. C. Jud. Act, 1873, *ante*, pp. 9, 10, and notes thereto.

*Practice on appeals.*—See O. LVIII., *post*, p. 434, and notes thereto.

*Interlocutory and final orders.*—It is not always easy to determine what judgments or orders are interlocutory and what are final. The distinction is important for three reasons.

1. An appeal from an interlocutory order can be heard by two Judges under this section.

2. The time for appealing from an interlocutory order is *twenty-one days*, while the time for appealing from a final order in an action is *one year*: see O. LVIII., r. 15, *post*, p. 444.

3. By O. XXXVIII., r. 3, *post*, p. 321, affidavits on interlocutory motions may extend to matters of information and belief instead of being confined to matters which the deponent is able of his own knowledge to prove; and by O. LVIII., r. 4, *post*, p. 438, further evidence may be given upon interlocutory appeals to the Court of Appeal without special leave.

As to what orders are final, and what interlocutory, see O. LVIII., rr. 3, 15, *post*, pp. 438, 444, and notes thereto.

**Sect. 13.**

13. Whereas by section sixty of the principal Act it is provided that for the purpose of facilitating the prosecution in country districts of legal proceedings, it shall be lawful for Her Majesty by Order in Council from time to time to direct that there shall be district registrars in such places as shall be in such order mentioned for districts to be thereby defined; and whereas it is expedient to amend the said section: Be it therefore enacted that—

Amendment  
of s. 60 of 36 &  
37 Vict. c. 66,  
as to district  
registrars.

Where any such Order has been made, two persons may, if required, be appointed to perform the duties of district registrar in any district named in the Order, and such persons shall be deemed to be joint district registrars, and shall perform the said duties in such manner as may from time to time be directed by the said Order, or any Order in Council amending the same.

Moreover the registrar of any inferior Court of record having jurisdiction in any part of any district defined by such Order (other than a County Court), shall, if appointed by Her Majesty, be qualified to be a district registrar for the said district, or for any and such part thereof as may be directed by such Order, or any Order amending the same.

Every district registrar shall be deemed to be an officer of the Supreme Court, and be subject accordingly to the jurisdiction of such Court, and of the divisions thereof.

*Appointment of Deputy by District Registrar.*—See s. 22 of the App. Jur. Act, 1876, *post*, p. 91.

*Appointment of District Registrars, &c.*—See ss. 60 *et seq.* of S. C. Jud. Act, 1873, *ante*, pp. 48, 49, and s. 22 of S. C. Jud. Act, 1881, *post*, p. 91.

*Proceedings in District Registries.*—See O. V., r. 2, *post*, p. 136, and notes thereto; O. XII., rr. 4 to 7, 10 and 11, *post*, pp. 157, 158, and notes thereto; O. XXIX., r. 13, *post*, p. 218, and notes thereto; O. XXXV., *post*, p. 278, and notes thereto.

**Sect. 14.**

14. Whereas under section eighty-seven of the principal Act, solicitors and attorneys will after the commencement of that Act be

Amendment  
of 36 & 37 Vict.



**Act 1875,  
ss. 14—17.**

c. 66, s. 87, as  
to enactments  
relating to  
attorneys.

called solicitors of the Supreme Court: Be it therefore enacted that—

The registrar of attorneys and solicitors in England shall be called the registrar of solicitors. [*Power to adapt enactments relating to attorneys to solicitors under s. 87 of the S. C. Jud. Act, 1873.*]

Repealed by S. L. Rev. Act, 1883.

**Sect. 15.**

Appeal from  
inferior Court  
of record.

**15.** It shall be lawful for Her Majesty from time to time, by Order in Council, to direct that the enactments relating to appeals from County Courts shall apply to any other inferior Court of record; and those enactments, subject to any exceptions, conditions, and limitations contained in the Order, shall apply accordingly, as from the date mentioned in the Order.

*Appeals from County Courts.*—See s. 45 of S. C. Jud. Act, 1873, *ante*, p. 38, and notes thereto.

**Sect. 16.**

**16.** [*Rules in 1st schedule in substitution for 36 & 37 Vict. c. 66, s. 69, and schedule.*]

Repealed by S. L. Rev. Act, 1883.

**Sect. 17.**

Provision as  
to making, &c.,  
of Rules of  
Court before  
or after the  
commence-  
ment of the  
Act,—in sub-  
stitution for  
36 & 37 Vict.  
c. 66, ss. 68,  
69, 74, and  
schedule.

**17.** Her Majesty may at any time after the passing and before the commencement of this Act, by Order in Council, made upon the recommendation of the Lord Chancellor, and the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and the Lords Justices of Appeal in Chancery, or any five of them, and the other Judges of the several Courts intended to be united and consolidated by the principal Act as amended by this Act, or of a majority of such other Judges, make any further or additional Rules of Court for carrying the principal Act and this Act into effect, and in particular for all or any of the following matters, so far as they are not provided for by the Rules in the first Schedule to this Act; that is to say,

- (1.) For regulating the sittings of the High Court of Justice *and the Court of Appeal*, and of any Divisional or other Courts thereof *respectively*, and of the Judges of the said High Court sitting in Chambers; and
- (2.) For regulating the pleading, practice, and procedure in the High Court of Justice and Court of Appeal; and
- (3.) Generally, for regulating any matters relating to the practice and procedure of the said Courts respectively, or to the duties of the officers thereof, or of the Supreme Court, or to the costs of proceedings therein.

In substitution  
for 36 & 37  
Vict. c. 66,  
s. 74.

From and after the commencement of this Act, the Supreme Court may at any time, with the concurrence of a majority of the Judges thereof, present at any meeting for that purpose held (of which majority the Lord Chancellor shall be one), alter and annul any Rules of Court for the time being in force, and have and exercise the same power of making Rules of Court as is by this section vested in Her Majesty in Council on the recommendation of the said Judges before the commencement of this Act.

All Rules of Court made in pursuance of this section shall be laid before each House of Parliament within such time and shall

be subject to be annulled in such manner as is in this Act provided.

Act 1875,  
s. 17.

All Rules of Court made in pursuance of this section, if made before the commencement of this Act, shall from and after the commencement of this Act, and if made after the commencement of this Act, shall from and after they come into operation, regulate all matters to which they extend, until annulled or altered in pursuance of this section.

The reference to certain Judges in section twenty-seven of the principal Act shall be deemed to refer to the Judges mentioned in this section as the Judges on whose recommendation an Order in Council may be made.

*Rules include Forms.*—See s. 100 of S. C. Jud. Act, 1873, *ante*, p. 63.

*Rule Committee.*—By s. 17 of App. Jur. Act, 1876, the constitution of the Rule Committee was altered, and, finally, by s. 19 of S. C. Jud. Act, 1881, *post*, p. 109, the power to make rules was vested in any five or more of the following persons, of whom the Lord Chancellor must be one, namely: The Lord Chancellor, the Lord Chief Justice, the Master of the Rolls, the President of the Probate Divorce and Admiralty Division, and four other Judges of the Supreme Court to be nominated in writing by the Lord Chancellor.

As to laying Rules of Court before Parliament in pursuance of the directions in this section (s. 17), see s. 25 of this Act, *infra*.

**JURISDICTION TO MAKE RULES.**—The jurisdiction to make rules is marked out by numerous sections, of which the above is the most important. The enactments which give general powers, or are of general application, are the following:—

S. 16 of this Act (now repealed), *supra*, brought into operation the rules in the first schedule thereto, and gave power to alter or annul them by rule.

S. 24 of this Act, *infra*, gives power to regulate by rules the payment of money into or out of Court.

S. 22 of S. C. Jud. Act, 1879 (the Officers Act), *post*, p. 100, gives power to make rules for the purposes of that Act; and further enacts, that when any Act authorises or directs rules to be made to carry out its provisions, the provisions of s. 17 of S. C. Jud. Act, 1875, shall extend to those rules. See also ss. 12, 24, 26, 27 of S. C. Jud. Act, 1879, *post*, pp. 98, 101, 102.

S. 6 of the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59), extends the power to make rules given by s. 17 of S. C. Jud. Act, 1875, to all proceedings by or against the Crown.

S. 6 of the Statute Law Revision and Civil Procedure Act, 1883, *post*, p. 126, extends the power to make rules to all matters contained in and regulated by the enactments thereby repealed.

S. 19 of this Act, *infra*, preserves the existing practice and procedure in criminal matters, subject to Rules of Court.

S. 18 of this Act, *infra*, preserves the powers of the President of the Probate Divorce and Admiralty Division to make rules in divorce and probate matters under the authority given by the 20 & 21 Vict. c. 77, s. 30, and the 20 & 21 Vict. c. 85, s. 53.

S. 16 of App. Jur. Act, 1876, *post*, p. 88, gives power to the President of the Court of Appeal, with the concurrence of three Judges of appeal, to make regulations as to the sittings of the Court of Appeal.

By s. 23 of S. C. Jud. Act, 1884, *post*, p. 120, the power of making Rules of Court extends to making rules regulating appeals from Inferior Courts.

By s. 24 of S. C. Jud. Act, 1884, *post*, p. 121, power is given to the Rule Committee of the Judges to make rules for all inferior Courts.

*Force of Rules.*—Rules of Court made under the Judicature Acts referred to have statutory force, and supersede all enactments prior to the Judicature Acts which are in any way inconsistent with such Rules of Court; for instance, the order as to costs (now O. LXV.) supersedes and impliedly repeals the 21 Jac. 1, c. 16, as to costs in slander where less than 40s. is recovered: *Garnett v. Bradley*, 3 App. Cas. 944; but it seems that Rules of Court cannot override or vary the provisions of the Judicature Acts themselves: see *Longman v. East*, 3 C. P. D. 142.



Act 1875,  
ss. 18—21.

**Sect. 18.**

Provision as to Rules of Probate, Divorce, and Admiralty Courts, being Rules of the High Court,—in substitution for 36 & 37 Vict. c. 66, s. 70.

<sup>1</sup> *Sic.*

18. All Rules and Orders of Court in force at the time of the commencement of this Act in the Court of Probate, the Court for Divorce and Matrimonial Causes, and the Admiralty Court, or in relation to appeals from the Chief Judge in Bankruptcy, or from the Court of Appeal in Chancery in bankruptcy matters, *except so far as they are expressly varied by the first Schedule hereto, or by Rules of Court made by Order in Council before the commencement of this Act*, shall remain and be in force in the High Court of Justice and in the Court of Appeal respectively, until they shall respectively be altered or annulled by any Rules of Court made after the commencement of this Act.

The present Judge of the Probate Court and of the Court for Divorce and Matrimonial Causes shall retain, and the president for the time being of the Probate and Divorce Division<sup>1</sup> of the High Court of Justice shall have, with regard to non-contentious or common form business in the Probate Court, the powers now conferred on the Judge of the Probate Court by the thirtieth section of the twentieth and twenty-first years of Victoria, chapter seventy-seven, and the said Judge shall retain, and the said president shall have, the powers as to the making of rules and regulations conferred by the fifty-third section of the twentieth and twenty-first years of Victoria, chapter eighty-five.

The words in italics are repealed by S. L. Rev. Act, 1883.

*Bankruptcy Appeals.*—Appeals in bankruptcy cases are now regulated by s. 104 of the Bankruptcy Act, 1883, and rules made under that Act, and by the Bankruptcy (County Courts) Appeals Act, 1884.

**Sect. 19.**

Provision as to criminal procedure, subject to future Rules remaining unaltered,—in substitution for 36 & 37 Vict. c. 66, s. 71.

19. Subject to *the first Schedule hereto* and any Rules of Court to be made under this Act, the practice and procedure in all criminal causes and matters whatsoever in the High Court of Justice and in the Court of Appeal respectively, including the practice and procedure with respect to Crown Cases Reserved, shall be the same as the practice and procedure in similar causes and matters before the commencement of this Act.

See ss. 19 and 47 of S. C. Jud. Act, 1873, *ante*, pp. 10, 41, and notes thereto. The words in italics were repealed by S. L. Rev. Act, 1883.

**Sect. 20.**

Provision as to Act not affecting rules of evidence or juries,—in substitution for 36 & 37 Vict. c. 66, s. 72.

20. Nothing in this Act *or in the first Schedule hereto*, or in any Rules of Court to be made under this Act, save as far as relates to the power of the Court for special reasons to allow depositions or affidavits to be read, shall affect the mode of giving evidence by the oral examination of witnesses in trials by jury, or the rules of evidence, or the law relating to jurymen or juries.

As to evidence generally, see O. XXXVII. and O. XXXVIII., *post*, pp. 307—320, and notes thereto.

The words in italics were repealed by S. L. Rev. Act, 1883.

**Sect. 21.**

Provision for saving of existing procedure of Courts when not inconsistent with this Act or

21. Save as by the principal Act or this Act, or by any Rules of Court, may be otherwise provided, all forms and methods of procedure which at the commencement of this Act were in force in any of the Courts whose jurisdiction is by the principal Act or this Act transferred to the said High Court and to the said Court of Appeal respectively, under or by virtue of any law, custom, general



order, or rules whatsoever, and which are not inconsistent with the principal Act or this Act or with any Rules of Court, may continue to be used and practised, in the said High Court of Justice and the said Court of Appeal respectively, in such and the like cases, and for such and the like purposes, as those to which they would have been applicable in the respective Courts of which the jurisdiction is so transferred, if the principal Act and this Act had not passed.

Act 1875.  
ss. 21—23.

rules of Court,  
—in substitution for 36 & 37 Vict. c. 66, s. 73.

*Variance between Common Law and Chancery Practice.*—Where the Act and rules contain no provision in point, and there was a variance between the practice of the Common Law and Chancery Courts, that practice which appears on the whole most convenient will now be adopted: *Newbiggin-by-the-Sea Gas Co. v. Armstrong*, 13 Ch. D. 310. For instance, where there was a written submission to arbitration, the practice at common law was to make the submission a Rule of Court, while in equity the award only was made a Rule of Court. The common law practice is the more convenient of the two, and is to be adopted for the future: *Re Oglesby's Arbitration*, W. N. (1879), 151; *Jones v. Jones*, 14 Ch. D. 593. But see *Re Rolfe*, 28 Sol. J. 165. In *La Grange v. McAndrew*, 4 Q. B. D. 211, the equity rule as to dismissing an action was followed. See further *Pringle v. Gloag*, 10 Ch. D. 676; *Laming v. Gee*, 10 Ch. D. 715; *Nurse v. Durnford*, 13 Ch. D. 764, as to the survival of the old practice. See further, note to s. 25, sub-s. 11, of S. C. Jud. Act, 1873, *ante*, p. 28.

As to the canon of construction for determining when the old practice is inconsistent with the new, see *Garnett v. Bradley*, 3 App. Cas. 944, where it was held that the order as to costs (now O. LXV.) was inconsistent with, and superseded the 21 Jac. 1, c. 16, s. 3, as to costs in slander.

See further O. L., r. 2, *post*, p. 128†, and O. LXXII., *post*, p. 515, which provide for carrying out this section.

#### Sect. 22.

22. Whereas by section forty-six of the principal Act it is enacted that “any Judge of the said High Court sitting in the exercise of its jurisdiction elsewhere than in a Divisional Court, may reserve any case, or any point in a case for the consideration of a Divisional Court, or may direct any case or point in a case to be argued before a Divisional Court:” Be it hereby enacted, that nothing in the said Act, nor in any rule or order made under the powers thereof or of this Act, shall take away or prejudice the right of any party to any action to have the issues for trial by jury submitted and left by the Judge to the jury before whom the same shall come for trial, with a proper and complete direction to the jury upon the law, and as to the evidence applicable to such issues:

Nothing in principal Act to prejudice right to have issues submitted, &c.

Provided also, that the said right may be enforced either by motion in the High Court of Justice or by motion in the Court of Appeal founded upon an exception entered upon or annexed to the record.

See O. XXXVI., Pt. II., *post*, p. 285, and notes thereto; s. 17 of App. Jur. Act, 1876, *post*, p. 89; and O. XXXIX., *post*, p. 328, and notes thereto. Where there was no record, the Court of Appeal ordered notice of motion to be given: *Cheese v. Lovejoy*, 2 P. D. 161.

#### Sect. 23.

23. Her Majesty may at any time after the passing of this Act, and from time to time, by Order in Council, provide in such manner and subject to such regulations as to Her Majesty may seem meet for all or any of the following matters:

Regulation of circuit.

1. For the discontinuance, either temporarily or permanently, wholly or partially, of any existing circuit, and the formation of any new circuit by the union of any counties or parts

Act 1875,  
s. 23.

of counties, or partly in one way and partly in the other, or by the constitution of any county or part of a county to be a circuit by itself; and in particular for the issue of commissions for the discharge of civil and criminal business in the county of Surrey to the Judges appointed to sit for the trial by jury of causes and issues in Middlesex or London or any of them; and

2. For the appointment of the place or places at which assizes are to be holden on any circuit; and
3. For altering by such authority and in such manner as may be specified in the Order, the day appointed for holding the assizes at any place on any circuit in any case, where, by reason of the pressure of business or other unforeseen cause, it is expedient to alter the same; and
4. For the regulation, so far as may be necessary for carrying into effect any Order under this section, of the venue in all cases, civil and criminal, triable on any circuit or elsewhere.

Her Majesty may from time to time, by Order in Council, alter, add to, or amend any Order in Council, made in pursuance of this section; and in making any Order under this section may give any directions which it appears to Her Majesty to be desirable to give for the purpose of giving full effect to such Order.

Provided that every Order in Council made under this section shall be laid before each House of Parliament within such time, and shall be subject to be annulled in such manner as is in this Act provided.

Any Order in Council purporting to be made in pursuance of this section shall have the same effect in all respects as if it were enacted in this Act.

The power hereby given to Her Majesty shall be deemed to be in addition to and not in derogation of any power already vested in Her Majesty in respect of the matters aforesaid; and all enactments in relation to circuits, or the places at which assizes are to be holden, or otherwise in relation to the subject-matter of any Order under this section, shall, so far as such enactments are inconsistent with such Order, be repealed thereby, whether such repeal is thereby expressly made or not; but all enactments relating to the power of Her Majesty to alter the circuits of the Judges, or places at which assizes are to be holden, or the distribution of revising barristers among the circuits, or otherwise enabling or facilitating the carrying the objects of this section into effect, and in force at the time of the passing of the principal Act, shall continue in force, and shall, with the necessary variations, if any, apply, so far as they are applicable, to any alterations in or dealings with circuits, or places at which assizes are to be holden, made or to be made after the passing of this Act, or to any other provisions of any Order made under this section; and if any such order is made for the issue of commissions for the discharge of civil and criminal business in the county of Surrey as before mentioned in this section, that county shall, for the purpose of the application of the said enactments, be deemed to be a circuit, and the senior Judge for the time being so commissioned, or such other Judge as may be for the time being designated for that purpose by Order in Council, shall, in



the month of July or August in every year, appoint the revising barristers for that county, and the cities and boroughs therein.

The expression "assizes" shall in this section be construed to include sessions under any commission of oyer and terminer, or gaol delivery, or any commission in lieu thereof issued under the principal Act.

See s. 29 of S. C. Jud. Act, 1873, *ante*, p. 30, and notes thereto.

As to winter assizes, the date of holding them, and the consolidation of counties for the purpose of such assize, see the Winter Assizes Acts, 1876 and 1877 (39 & 40 Vict. c. 57, and 40 & 41 Vict. c. 46); and note to S. C. Jud. Act, 1873, s. 29, *ante*, p. 30. As to spring assizes, see the Spring Assizes Act, 1879 (42 & 43 Vict. c. 1).

Act 1875,  
ss. 23—25.

**24.** Where any provisions in respect of the practice or procedure of any Courts the jurisdiction of which is transferred by the principal Act or this Act to the High Court of Justice or the Court of Appeal, are contained in any Act of Parliament, Rules of Court may be made for modifying such provisions to any extent that may be deemed necessary for adapting the same to the High Court of Justice and the Court of Appeal, without prejudice, nevertheless, to any power of the Lord Chancellor, with the concurrence of the Treasury, to make any Rules with respect to the Paymaster-General, or otherwise.

Any provisions relating to the payment, transfer, or deposit into, or in, or out of any Court of any money or property, or to the dealing therewith, shall, for the purposes of this section, be deemed to be provisions relating to practice and procedure.

The Lord Chancellor, with the concurrence of the Treasury, may from time to time, by order, determine to what accounts and how intitled any such money or property as last aforesaid, whether paid, transferred, or deposited before or after the commencement of this Act, is to be carried, and modify all or any forms relating to such accounts; and the Governor and Company of the Bank of England, and all other companies, bodies corporate, and persons, shall make such entries and alterations in their books as may be directed by the Lord Chancellor, with the concurrence of the Treasury, for the purpose of carrying into effect any such order.

See s. 17, *supra*, and note thereto. See, as to this section, *Gloucestershire Banking Co. v. Phillips*, 12 Q. B. D. 533, at p. 537.

**25.** Every Order in Council and Rule of Court required by this Act to be laid before each House of Parliament shall be so laid within forty days next after it is made, if Parliament is then sitting, or if not, within forty days after the commencement of the then next ensuing session; and if an address is presented to Her Majesty by either House of Parliament, within the next subsequent forty days on which the said house shall have sat, praying that any such Rule or Order may be annulled, Her Majesty may thereupon, by Order in Council, annul the same; and the Rule or Order so annulled shall thenceforth become void and of no effect, but without prejudice to the validity of any proceedings which may in the meantime have been taken under the same.

This section shall come into operation immediately on the passing of this Act.

See s. 17, *supra*, and note thereto.

**Sect. 24.**

Additional power as to regulation of practice and procedure by Rules of Court.

**Sect. 25.**

Orders and Rules to be laid before Parliament, and may be annulled on address from either House.



Act 1875,  
ss. 26—28.

Sect. 26.  
Fixing and  
collection of  
fees in High  
Court and  
Court of  
Appeal.

**26.** The Lord Chancellor, with the advice and consent of the Judges of the Supreme Court, or any three of them, and with the concurrence of the Treasury, may, either before or after the commencement of this Act, by order, fix the fees and percentages (including the percentage on estates of lunatics) to be taken in the High Court of Justice or in the Court of Appeal, or in any Court created by any commission, or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts or the Supreme Court, or any Judge of those Courts, including the masters and other officers in lunacy, and may from time to time, by order, increase, reduce, or abolish all or any of such fees and percentages, and appoint new fees and percentages to be taken in the said Courts or offices, or any of them, or by any such officer as aforesaid.

Any order made in pursuance of this section shall be binding on all the Courts, offices, and officers to which it refers, in the same manner as if it had been enacted by Parliament.

(3.) The Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees.

An order under this section may abolish any existing fees and percentages which may be taken in the said Courts or offices, or any of them, or by the said officers or any of them, but, subject to the provisions of any order made in pursuance of this section, the existing fees and percentages shall continue to be taken, applied, and accounted for in the existing manner.

The third paragraph of this section and all the rules as to fees and percentages, except rule 3, were repealed by S. L. Rev. Act, 1883.

The repealed rules in this section which regulated the collection of fees were superseded by the provisions of the Public Offices Fees Act, 1879 (42 & 43 Vict. c. 58).

See the orders as to fees issued under this section, *post*, pp. 682 *et seq.*

Sect. 27.

**27.** [*Provisions as to Lancaster Fee Fund and salaries, &c., of officers of Courts at Lancaster and Durham, 32 & 33 Vict. c. 37.*]

Repealed by S. L. Rev. Act, 1883.

Sect. 28.

Annual ac-  
count of fees  
and expendi-  
ture.

**28.** The Treasury shall cause to be prepared annually an account for the year ending the 31st day of March, showing the receipts and expenditure during the preceding year in respect of the High Court of Justice and the Court of Appeal, and of any Court, office, or officer, the fees taken in which or by whom can be fixed in pursuance of this Act.

Such account shall be made out in such form and contain such particulars as the Treasury, with the concurrence of the Lord Chancellor, may from time to time direct.

Every officer by whom or in whose office fees are taken which can be fixed in pursuance of this Act, shall make such returns and give such information as the Treasury may from time to time require for the purpose of enabling them to make out the said account.

The said account shall be laid before both Houses of Parliament within one month after the thirty-first day of March in each year,

if Parliament is then sitting, or, if not, then within one month after the next meeting of Parliament.

Act 1875,  
ss. 28—30.

See s. 26, *supra*, and note thereto. This section seems to be partially superseded by the more general powers of s. 3 of the Public Offices Fees Act, 1879.

29. [*Amendment of law as to payments to senior puisne Judge of Queen's Bench, and Queen's coroner.*]

Sect. 29.

Repealed by S. L. Rev. Act, 1883.

So long as the person who, on the first day of March, one thousand eight hundred and seventy-five, was the Queen's coroner and attorney continues to hold that office, there shall be payable to him out of moneys provided by Parliament the annual sum of ten pounds, and such sum shall be payable to him at the like time at which the said annual sum of ten pounds has heretofore been payable to him, or at such other times as the Treasury, with the consent of such Queen's coroner or attorney, may direct.

30. Whereas by section sixteen of "The Court of Chancery Funds Act, 1872," it is enacted that an order of the Court of Chancery may direct securities standing to the account of the Paymaster General on behalf of the Court of Chancery to be converted into cash, and that where such order refers to Government securities such securities shall be transferred to the Commissioners for the reduction of the National Debt in manner therein mentioned:

Sect. 30.  
Amendment  
of 35 & 36  
Vict. c. 44, as  
to the transfer  
of Government  
securities to  
and from the  
Paymaster-  
General on  
behalf of the  
Court of Chan-  
cery and the  
National Debt  
Commis-  
sioners.

And whereas the said section contains no provision for the converse cases of the conversion of cash into securities and the transfer of securities from the said Commissioners to the account of the Paymaster General on behalf of the Court of Chancery:

And whereas such conversion and transfer, and the other matters provided by the said section, can be more conveniently provided for by rules made in pursuance of section eighteen of the said Act; and it is expedient to remove doubts with respect to the power to provide by such rules for the investment in securities of money in Court, and the conversion into money of securities in Court:

Be it therefore enacted as follows:

Section sixteen of "The Court of Chancery Funds Act, 1872," is hereby repealed.

Rules may from time to time be made in pursuance of section eighteen of "The Court of Chancery Funds Act, 1872," with respect to the investment in securities of money in Court, and the conversion into money of securities in Court, and with respect to the transfer to the Commissioners for the reduction of the National Debt of Government securities ordered by the Court to be sold or converted into cash, and to the transfer by those Commissioners to the Paymaster General for the time being, on behalf of the Court of Chancery, of Government securities ordered by the Court of Chancery to be purchased.

This section shall come into operation on the passing of this Act, and shall be construed together with "The Court of Chancery



**Act 1875,  
ss. 30—35.**

Funds Act, 1872," and shall be subject to any alteration in that Act made by or in pursuance of the principal Act or this Act.

Rules under this section were for the first time made in 1884. They have since been superseded by the Supreme Court Funds Rules, 1886, which embody in a consolidated form all the rules relating to the Pay Office of the Supreme Court. See *post*, pp. 724—770.

**Sect. 31.**

**31.** [*Abolition of secretary to the visitors of lunatics*, 16 § 17 *Vict. c. 70.*]

Repealed by S. L. Rev. Act, 1883.

**Sect. 32.**

**32.** [*Amendment of 32 § 33 Vict. c. 83, s. 19; and 32 § 33 Vict. c. 71, s. 116, as to payment of unclaimed dividends to persons entitled.*]

Repealed by Bankruptcy Act, 1883.

**Sect. 33.**

Repeal.

**33.** From and after the commencement of this Act there shall be repealed—

- (1.) *The Acts specified in the Second Schedule to this Act, to the extent in the third column of that schedule mentioned, without prejudice to anything done or suffered before the said commencement under the enactments hereby repealed; also,*
- (2.) Any other enactment inconsistent with this Act or the principal Act.

The words in italics were repealed by S. L. Rev. Act, 1883.

As to the canon of construction for determining that enactments are or are not inconsistent with the Acts, see *Garnett v. Bradley*, 3 App. Cas. 944, esp. at pp. 956 and 965.

As to explaining the meaning of an enactment by reference to an enactment which it repeals, see *A.-G. v. Lamplough*, 3 Ex. D. 224, at pp. 227, 231, 234.

See also s. 6 of 46 & 47 *Vict. c. 49, post*, p. 126.

**Sect. 34.**

**34.** [*As to vacancies in any office within s. 77 of principal Act.*]

See s. 77 of S. C. Jud. Act, 1873, *ante*, p. 54. This section was superseded by s. 9 of S. C. Jud. Act, 1879, *post*, p. 97, and afterwards repealed by the S. L. Rev. Act, 1883.

**Sect. 35.**

Amendment  
of principal  
Act, s. 79, as  
to chamber  
clerks.

**35.** Be it enacted, that any person who, at the time of the commencement of this Act, shall hold the office of chamber clerk shall be eligible at any time thereafter for appointment to the like office, anything in the principal Act to the contrary notwithstanding; and that, if any such person shall be so appointed after the commencement of this Act, he shall, if the salary assigned to such office, by or under the principal Act, be less than the salary received by him at the time of the commencement of this Act, be entitled to receive a salary not less than that so formerly received by him so long as he shall retain such office, but shall not be entitled to receive or claim any pension in respect of his service, unless the Treasury, in its absolute discretion, shall think fit to sanction the same.

See s. 79 of S. C. Jud. Act, 1873, *ante*, p. 56, and note thereto. See also O. LXI., *post*, p. 455. Several Judges' clerks received permanent appointments under this section, and are now classified as second-class clerks in the Central Office.

*N.B.*—The Rules of Court, of 1875, constituted the First Schedule to this Act. They are now superseded by the Rules of 1883.

The Second Schedule was repealed by the Stat. Law Revision Act, 1883.



# APPELLATE JURISDICTION ACT, 1876

(39 & 40 VICT. c. 59).

[NOTE.—The sections and parts of sections in *Italic type*, or the effect of which is given, between brackets, in *Italic type*, have been repealed.]

An Act for amending the Law in respect of the Appellate Jurisdiction of the House of Lords; and for other purposes. [11th August, 1876.]

Act 1876,  
ss. 1—3.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## PRELIMINARY.

1. This Act may be cited for all purposes as "The Appellate Jurisdiction Act, 1876."

Sect. 1.

Short title.

2. This Act shall, except where it is otherwise expressly provided, come into operation on the first day of November one thousand eight hundred and seventy-six, which day is hereinafter referred to as the commencement of this Act.

Sect. 2.

Commence-  
ment of Act.

## APPEAL.

3. Subject as in this Act mentioned, an appeal shall lie to the House of Lords from any order or judgment of any of the Courts following; that is to say,

Sect. 3.

Cases in which  
appeal lies to  
House of  
Lords.

- (1.) Of Her Majesty's Court of Appeal in England; and
- (2.) Of any Court in Scotland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute; and
- (3.) Of any Court in Ireland from which error or an appeal at or immediately before the commencement of this Act lay to the House of Lords by common law or by statute.

The S. C. Jud. Act, 1873, s. 20, *ante*, p. 13, contemplated the abolition of all appeals to the House of Lords. The operation of that section was suspended by s. 2 of S. C. Jud. Act, 1875, *ante*, p. 65. And the present Act permanently established the appellate jurisdiction of the House of Lords.

*Fiat of Attorney-General.*—As to requiring the fiat of the Attorney-General, see s. 10, *infra*.

**Act 1876,  
ss. 3—6.**

*Appeals under Divorce Act.*—The general right of appeal given by this section from any order or judgment of the Court of Appeal is limited as regards Divorce and Legitimacy appeals by ss. 9 and 10 of S. C. Jud. Act, 1881: see *post*, pp. 106, 107.

*Bankruptcy appeals.*—As to leave to appeal in bankruptcy cases, see *Ex p. Jackson*, 14 Ch. D. 75, decided under the Bankruptcy Act, 1869. See now s. 104 of the Bankruptcy Act, 1883.

*Scotch and Irish appeals.*—See s. 12 of this Act, *infra*, as to Scotch and Irish appeals.

*Appeal for costs.*—No appeal lies to the House of Lords on a question of costs alone, but where the Court of appeal granted a new trial on the terms that the defendant should first pay the plaintiff's costs of the first trial, it was held that an appeal from that order would be entertained: *Metropolitan Asylums District Board v. Hill*, 5 App. Cas. 582.

**Sect. 4.**

Form of  
appeal to  
House of  
Lords.

4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before Her Majesty the Queen in Her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

*Procedure on appeal.*—See Forms and Orders, *post*, pp. 802 *et seq.*

**Sect. 5.**

Attendance of  
certain number  
of Lords of  
Appeal  
required at  
hearing and  
determination  
of appeals.

5. An appeal shall not be heard and determined by the House of Lords unless there are present at such hearing and determination not less than three of the following persons, in this Act designated Lords of Appeal; that is to say,

- (1.) The Lord Chancellor of Great Britain for the time being; and
- (2.) The Lords of Appeal in Ordinary to be appointed as in this Act mentioned; and
- (3.) Such Peers of Parliament as are for the time being holding or have held any of the offices in this Act described as high judicial offices.

**Sect. 6.**

Appointment  
of Lords of  
Appeal in  
ordinary by  
Her Majesty.

6. For the purpose of aiding the House of Lords in the hearing and determination of appeals, Her Majesty may, at any time after the passing of this Act, by letters patent, appoint two qualified persons to be Lords of Appeal in Ordinary, but such appointment shall not take effect until the commencement of this Act.

A person shall not be qualified to be appointed by Her Majesty a Lord of Appeal in Ordinary unless he has been at or before the time of his appointment the holder for a period of not less than two years of some one or more of the offices in this Act described as high judicial offices, or has been at or before such time as aforesaid, for not less than fifteen years, a practising barrister in England or Ireland, or a practising advocate in Scotland.

Every Lord of Appeal in Ordinary shall hold his office during good behaviour, and shall continue to hold the same notwithstanding the demise of the Crown, but he may be removed from such office on the address of both Houses of Parliament.

There shall be paid to every Lord of Appeal in Ordinary a salary of six thousand pounds a year.

Every Lord of Appeal in Ordinary, unless he is otherwise entitled to sit as a member of the House of Lords, shall by virtue and

according to the date of his appointment be entitled during his life to rank as a baron by such style as Her Majesty may be pleased to appoint, and shall during the time that he continues in his office as a Lord of Appeal in Ordinary, and no longer, be entitled to a writ of summons to attend, and to sit and vote in the House of Lords; his dignity as a Lord of Parliament shall not descend to his heirs.

On any Lord of Appeal in Ordinary vacating his office, by death, resignation, or otherwise, Her Majesty may fill up the vacancy by the appointment of another qualified person.

A Lord of Appeal in Ordinary shall, if a Privy Councillor, be a member of the Judicial Committee of the Privy Council, and, subject to the due performance by a Lord of Appeal in Ordinary of his duties as to the hearing and determining of appeals in the House of Lords, it shall be his duty, being a Privy Councillor, to sit and act as a member of the Judicial Committee of the Privy Council.

As to the meaning of the term "High Judicial Office" in this section, see s. 25, *infra*. As to increasing the number of Lords of Appeal, see s. 14, *infra*.

Act 1876,  
ss. 6—8.

SUPPLEMENTAL PROVISIONS.

7. Her Majesty may by letters patent grant to any Lord of Appeal in Ordinary, who has served for fifteen years or is disabled by permanent infirmity from the performance of the duties of his office, a pension by way of annuity to be continued during his life equal in amount to the pension which might under similar circumstances be granted to the Master of the Rolls, in pursuance of the Supreme Court of Judicature Act, 1873.

Previous service in any office described in this Act as a high judicial office shall for the purposes of pension be deemed equivalent to service in the office of a Lord of Appeal in Ordinary under this Act.

The salary and pension payable to a Lord of Appeal in Ordinary shall be charged on and paid out of the consolidated fund of the United Kingdom, and shall accrue due from day to day, and shall be payable to the person entitled thereto, or to his executors and administrators, at such intervals in every year, not being longer than three months, as the Treasury may from time to time determine.

8. For preventing delay in the administration of justice, the House of Lords may sit and act for the purpose of hearing and determining appeals, and also for the purpose of Lords of Appeal in Ordinary taking their seats and the oaths, during any prorogation of Parliament, at such time and in such manner as may be appointed by order of the House of Lords made during the preceding session of Parliament; and all orders and proceedings of the said House in relation to appeals and matters connected therewith during such prorogation, shall be as valid as if Parliament had been then sitting, but no business other than the hearing and determination of appeals and the matters connected therewith, and Lords of Appeal in Ordinary taking their seats and the oaths as aforesaid, shall be transacted by such House during such prorogation.

Any order of the House of Lords may for the purposes of this Act be made at any time after the passing of this Act.

Under this section sittings are held every November.

Sect. 7.

Pension of  
Lord of Appeal  
in Ordinary.

Sect. 8.

Hearing and  
determination  
of appeals  
during proro-  
gation of  
Parliament.



**Act 1876,  
ss. 9—14.****Sect. 9.**

Hearing and  
determination  
of appeals  
during dissolu-  
tion of Parlia-  
ment.

9. If on the occasion of a dissolution of Parliament Her Majesty is graciously pleased to think that it would be expedient, with a view to prevent delay in the administration of justice, to provide for the hearing and determination of appeals during such dissolution, it shall be lawful for Her Majesty, by writing under her sign manual, to authorize the Lords of Appeal in the name of the House of Lords to hear and determine appeals during the dissolution of Parliament, and for that purpose to sit in the House of Lords at such times as may be thought expedient; and upon such authority as aforesaid being given by Her Majesty, the Lords of Appeal may, during such dissolution, hear and determine appeals and act in all matters in relation thereto in the same manner in all respects as if their sittings were a continuation of the sittings of the House of Lords, and may, in the name of the House of Lords, exercise the jurisdiction of the House of Lords accordingly.

See *Société Générale v. Walker*, 11 App. Cas. 20.

**Sect. 10.**

Saving as to  
fiat of Attor-  
ney-General.

10. An appeal shall not be entertained by the House of Lords without the consent of the Attorney-General or other law officer of the Crown in any case where proceedings in error or on appeal could not hitherto have been had in the House of Lords without the fiat or consent of such officer.

**Sect. 11.**

Procedure  
under Act to  
supersede all  
other proce-  
dure.

11. After the commencement of this Act, error shall not lie to the House of Lords, and an appeal shall not lie from any of the Courts from which an appeal to the House of Lords is given by this Act, except in manner provided by this Act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

Every appeal must, by s. 4, *supra*, be by petition. See Forms and Orders, *post*, pp. 803 *et seq.*

**Sect. 12.**

Certain cases  
excluded from  
appeal.

12. Except in so far as may be authorized by orders of the House of Lords, an appeal shall not lie to the House of Lords from any Court in Scotland or Ireland in any case which, according to the law or practice hitherto in use, could not have been reviewed by that House, either in error or on appeal.

**Sect. 13.**

13. [*Provision as to pending business.*]

Repealed by the S. L. Rev. Act, 1883.

## AMENDMENT OF ACTS.

**Sect. 14.**

Amendment  
of the Act of  
34 & 35 Vict.  
c. 91, relating  
to the consti-  
tution of the  
Privy Council.

14. Whereas, by the Act of the session of the thirty-fourth and thirty-fifth years of the reign of Her present Majesty, chapter ninety-one, intituled "An Act to make further provision for the despatch of business by the Judicial Committee of the Privy Council," Her Majesty was empowered to appoint and did appoint four persons qualified as in that Act mentioned to act as members of the Judicial Committee of the Privy Council at such salaries as

are in the said Act mentioned, in this Act referred to as paid Judges of the Judicial Committee of the Privy Council :

Act 1876,  
ss. 14, 15.

And whereas the power given by the said Act of filling any vacancies occasioned by death, or otherwise, in the offices of the persons so appointed, has lapsed by efflux of time, and Her Majesty has no power to fill any such vacancies :

Be it enacted, that whenever any two of the paid Judges of the Judicial Committee of the Privy Council have died or resigned, Her Majesty may appoint a third Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary hereinbefore authorized to be appointed, and on the death or resignation of the remaining two paid Judges of the Judicial Committee of the Privy Council Her Majesty may appoint a fourth Lord of Appeal in Ordinary in addition to the Lords of Appeal in Ordinary aforesaid : and may from time to time fill up any vacancies occurring in the offices of such third and fourth Lord of Appeal in Ordinary.

Any Lord of Appeal in Ordinary appointed in pursuance of this section shall be appointed in the same manner, hold his office by the same tenure, be entitled to the same salary and pension, and in all respects be in the same position as if he were a Lord of Appeal in Ordinary appointed in pursuance of the power in this Act before given to Her Majesty.

Her Majesty may, by Order in Council, with the advice of the Judicial Committee of Her Majesty's Privy Council, or any five of them, of whom the Lord Chancellor shall be one, and of the archbishops and bishops being members of Her Majesty's Privy Council, or any two of them, make rules for the attendance, on the hearing of Ecclesiastical cases, as assessors of the said committee, of such number of the archbishops and bishops of the Church of England as may be determined by such rules.

The rules may provide for the assessors being appointed for one or more year or years, or by rotation or otherwise, and for filling up any temporary or other vacancies in the office of assessor.

Any rule made in pursuance of this section shall be laid before each House of Parliament within forty days after it is made if Parliament be then sitting, or, if not then sitting, within forty days after the commencement of the then next session of Parliament.

If either House of Parliament present an address to Her Majesty within forty days after any such rule has been laid before such House, praying that any such rule may be annulled, Her Majesty may thereupon, by Order in Council, annul the same, and the rule so annulled shall thenceforth become void, but without prejudice nevertheless to the making of any other rule in its place, or to the validity of anything which may in the meantime have been done under any such rule.

#### Sect. 15.

15. Whereas it is expedient to amend the constitution of Her Majesty's Court of Appeal in manner hereinafter mentioned :  
[*Repeal of so much of s. 4 of S. C. Jud. Act, 1875, as provides that ordinary Judges of C. A. shall not exceed three.*]

In addition to the number of ordinary Judges of the Court of Appeal authorized to be appointed by the Supreme Court of Judicature Act, 1875, Her Majesty may appoint three additional ordinary Judges of that Court.

Amendment of  
the Supreme  
Court of Judi-  
cature Acts in  
relation to  
Her Majesty's  
Court of  
Appeal.



Act 1876,  
ss. 15, 16.

The first three appointments of additional Judges under this Act shall be made by such transfer to the Court of Appeal as is in this section mentioned of three Judges of the High Court of Justice, and the vacancies so created in the High Court of Justice shall not be filled up, except in the event and to the extent hereinafter mentioned.

*[Power to Her Majesty, by writing under sign manual, to transfer Judges from Q. B. D., C. P. D., and Ex. D. to C. A.]*

Every additional ordinary Judge of the said Court of Appeal appointed in pursuance of this Act shall be subject to the provisions of sections twenty-nine and thirty-seven of the Supreme Court of Judicature Act, 1873, and shall be under an obligation to go circuits and to act as commissioner under commissions of assize or other commissions authorized to be issued in pursuance of the said Act, in the same manner in all respects as if he were a Judge of the High Court of Justice.

There shall be paid to every additional ordinary Judge appointed in pursuance of this Act, in addition to the salary which he would otherwise receive as an ordinary Judge of the Court of Appeal, such sum on account of his expenses on circuit or under such commission as aforesaid as may be approved by the Treasury upon the recommendation of the Lord Chancellor.

*[Transferred Judge to retain personal officers.]*

Subject as aforesaid, the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the appointment of ordinary Judges of Her Majesty's Court of Appeal, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to such Judges, and all other provisions relating to such ordinary Judges, shall apply to the additional ordinary Judges appointed in pursuance of this section in the same manner as they apply to the other ordinary Judges of the said Court.

*For the purpose of a transfer to the Court of Appeal under this section, service as a Judge in a Court whose jurisdiction is transferred to the High Court shall be deemed to have been service as a Judge in any one or more of such divisions of the High Court as are in this section in that behalf mentioned; and for the purpose of the pension of any person appointed under this Act an additional ordinary Judge of Appeal, service in the High Court of Justice, or in any Court whose jurisdiction is transferred to the High Court of Justice or to the Court of Appeal, shall be deemed to have been service in the Court of Appeal.*

The omitted parts of this section and the part printed in italics were repealed by S. L. Rev. Act, 1883.

See ss. 2, 3, 4, of S. C. Jud. Act, 1881, *post*, pp. 104, 105, making the Master of the Rolls a Judge of Appeal only, and making the President of the Probate Divorce and Admiralty Division an *ex officio* member of the Court of Appeal.

#### Sect. 16.

Orders in relation to conduct of business in Her Majesty's Court of Appeal.

16. Orders for constituting and holding Divisional Courts of the Court of Appeal, and for regulating the sittings of the Court of Appeal, and of the Divisional Courts of Appeal, may be made, and when made in like manner rescinded or altered, by the President of the Court of Appeal, with the concurrence of the ordinary Judges of the Court of Appeal, or any three of them; *[Repeal of so much of*



s. 17 of *S. C. Jud. Act, 1875, and so much of rules of Court as may be inconsistent with order made under this section.*]

Act 1876,  
ss. 16, 17.

Repealed in part by S. L. Rev. Act, 1883.

See note to s. 17 of S. C. Jud. Act, 1875, *ante*, p. 75.

**Sect. 17.**

17. On and after the first day of December, one thousand eight hundred and seventy-six, every action and proceeding in the High Court of Justice, and all business arising out of the same, except as is hereinafter provided, shall, so far as is practicable and convenient, be heard, determined, and disposed of before a single Judge, and all proceedings in an action subsequent to the hearing or trial, and down to and including the final judgment or order, except as aforesaid, and always excepting any proceedings on appeal in the Court of Appeal, shall, so far as is practicable and convenient, be had and taken before the Judge before whom the trial or hearing of the cause took place: Provided, nevertheless, that Divisional Courts of the High Court of Justice may be held for the transaction of any business which may for the time being be ordered by rules of Court to be heard by a Divisional Court; and any such Divisional Court, when held, shall be constituted of two Judges of the Court and no more, unless the President of the Division to which such Divisional Court belongs, with the concurrence of the other Judges of such Division, or a majority thereof, is of opinion that such Divisional Court should be constituted of a greater number of Judges than two, in which case such Court may be constituted of such number of Judges as the President, with such concurrence as aforesaid, may think expedient; nevertheless the decisions of a Divisional Court shall not be invalidated by reason of such Court being constituted of a greater number than two Judges; and

Regulations as to business of High Court of Justice and Divisional Courts of High Court.

Rules of Court for carrying into effect the enactments contained in this section shall be made on or before the first day of December, one thousand eight hundred and seventy-six, and may be afterwards altered, and all rules of Court to be made after the passing of this Act, whether made under the Supreme Court of Judicature Act, 1875, or this Act, shall be made by *any three or more of the following persons, of whom the Lord Chancellor shall be one, namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, the Lord Chief Baron of the Exchequer, and four other Judges of the Supreme Court of Judicature, to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein, and all such rules of Court shall be laid before each House of Parliament within such time and subject to be annulled in such manner as is provided by the Supreme Court of Judicature Act, 1875.*

*There shall be repealed on and after the first day of December, one thousand eight hundred and seventy-six, so much of sections forty, forty-one, forty-two, forty-three, forty-four, and forty-six of the Supreme Court of Judicature Act, 1873, as is inconsistent with the provisions of this section.*

The parts of this section printed in italics were repealed by S. L. Rev. Act, 1883.

*Divisional Courts.*—See s. 4 of S. C. Jud. Act, 1884, *post*, p. 114, and O. LIX., *post*, pp. 449—454.

Act 1876,  
ss. 17—20.

*Rule Committee of Judges.*—See note to s. 17 of S. C. Jud. Act, 1875, *ante*, p. 75.

**Sect. 18.**

Power in certain events to fill vacancies occasioned in High Court of Justice by removal of Judges to Court of Appeal.

**18.** Whenever any two of the said paid Judges of the Judicial Committee of the Privy Council have died or resigned, Her Majesty may, upon an address from both Houses of Parliament, representing that the state of business in the High Court of Justice is such as to require the appointment of an additional Judge, fill up one of the vacancies created by the transfer hereinbefore authorized, by appointing one new Judge of the said High Court in any Division thereof; and on the death or retirement of the remaining two paid Judges of the said Judicial Committee, Her Majesty may, upon the like address, fill up in like manner another of the said vacancies, and from time to time fill up any vacancies occurring in the offices of Judges so appointed.

**Sect. 19.**

Attendance of Judges of High Court of Justice on Court of Appeal.

**19.** Where a Judge of the High Court of Justice has been requested to attend as an additional Judge at the sittings of the Court of Appeal under section four of the Supreme Court of Judicature Act, 1875, such Judge shall, although the period has expired during which his attendance was requested, attend the sittings of the Court of Appeal for the purpose of giving judgment or otherwise in relation to any case which may have been heard by the Court of Appeal during his attendance on the Court of Appeal.

The section intended to be referred to is evidently s. 4 of S. C. Jud. Act, 1875, *ante*, p. 66.

**Sect. 20.**

Amendment of Judicature Acts as to appeals from High Court of Justice in certain cases.

**20.** Where by Act of Parliament it is provided that the decision of any Court or Judge the jurisdiction of which Court or Judge is transferred to the High Court of Justice is to be final, an appeal shall not lie in any such case from the decision of the High Court of Justice, or of any Judge thereof, to Her Majesty's Court of Appeal.

This section imposes an important limitation on the general right of appeal from every judgment or order given by S. C. Jud. Act, 1873, as to which see s. 19 of that Act, *ante*, p. 10, and notes thereto.

*Interpleader.*—See O. LVII., r. 11, and notes thereto, *post*, p. 432.

*County Court appeal.*—By s. 14 of the County Courts Act, 1850 (13 & 14 Vict. c. 61), an appeal is given in certain cases from the County Court to one of the Superior Courts at Westminster, and it is provided that the orders of the Superior Court shall be final. By s. 45 of S. C. Jud. Act, 1873, *ante*, p. 38, an appeal lies by special leave from the decision of the High Court on a County Court appeal. The present section does not revive the provision of the County Courts Act which had been impliedly repealed by s. 45 of the Act of 1873, and an appeal still lies by leave from the decision of the High Court on a County Court appeal: *Crush v. Turner*, 3 Ex. D. 303.

*Prohibition.*—By s. 42 of the County Courts Act, 1856 (19 & 20 Vict. c. 108), it is provided, that, when application is made to a Superior Court for a writ of prohibition to the Judge of a County Court, the matter shall be finally disposed of by rule or order, and no declaration or further proceedings in prohibition shall be allowed. An appeal still lies from the decision of a Divisional Court on an application for a prohibition to a County Court: *Barton v. Titchmarsh*, 49 L. J., Q. B. 573.

*Case stated by Railway Commissioners.*—No appeal lay from a case stated by Railway Commissioners for opinion of Q. B. D.: *Hall v. L. B. & S. C. Ry.*, 17 Q. B. D. 230; but by the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), appeals from the decision of the Commission established by that Act lie to the C. A.



**21.** [*Continuation until 1st Jan., 1878, of s. 34 of 38 & 39 Vict. c. 77, as to vacancies in legal offices.*]

**Act 1876,  
ss. 21—24.**

By s. 6 of S. C. Jud. Act, 1877, *post*, p. 94, the 1st January, 1879, was substituted, and the section was afterwards repealed by the S. L. Rev. Act, 1883.  
See s. 77 of S. C. Jud. Act, 1873, *ante*, p. 54. See also ss. 21, 22 of S. C. Jud. Act, 1881, *post*, pp. 110, 111.

**Sect. 21.**

**22.** A district registrar of the Supreme Court of Judicature may from time to time, but in each case with the approval of the Lord Chancellor and subject to such regulations as the Lord Chancellor may from time to time make, appoint a deputy, and all acts authorized or required to be done by, to, or before a district registrar may be done by, to, or before any deputy so appointed: Provided always, that in no case such appointment shall be made for a period exceeding three months. This section shall come into force at the time of the passing of this Act.

**Sect. 22.**  
Appointment of deputy by district registrar.

As to district registrars and their jurisdiction, see ss. 60 to 66 of S. C. Jud. Act, 1873, *ante*, pp. 48, 49; s. 13 of S. C. Jud. Act, 1875, *ante*, p. 73; O. XXXV., *post*, pp. 278 *et seq.*; and s. 22 of S. C. Jud. Act, 1881, *post*, p. 110.

**23.** Whereas by the Vice-Admiralty Courts Act, 1863, it is enacted, that "nothing in this Act contained shall be taken to affect the power of the Admiralty to appoint any vice-admiral, or any Judge, registrar, marshal, or other officer of any Vice-Admiralty Court, as heretofore, by warrant from the Admiralty, and by letters patent issued under the seal of the High Court of Admiralty of England:"

**Sect. 23.**  
Appointment of vice-admiral, Judge, and officers of Vice-Admiralty Court.

And whereas since the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, doubts have arisen with respect to the exercise of the said power of the Admiralty, and it is expedient to remove such doubts: Be it therefore enacted as follows:

Any power of the Admiralty to appoint or cancel the appointment of a vice-admiral, or a Judge, registrar, marshal, or other officer of a Vice-Admiralty Court, may, after the passing of this Act, be exercised by some writing under the hands of the Admiralty, and the seal of the office of Admiralty, and in such form as the Admiralty from time to time direct.

Every appointment so made shall have the same effect, and every vice-admiral, Judge, registrar, marshal, and other officer so appointed shall have the same jurisdiction, power, and authority, and be subject to the same obligation, as if he had been appointed before the commencement of the Supreme Court of Judicature Acts, 1873 and 1875, under the seal of the High Court of Admiralty of England.

"Admiralty" in this section means the Lord High Admiral, or the commissioners for executing his office, or any two of such commissioners.

REPEAL AND DEFINITIONS.

**24.** [*Repeal of certain sections of the Church Discipline Act, and of the Supreme Court of Judicature Acts.*]

**Sect. 24.**

Repealed by S. L. Rev. Act, 1883.



Act 1876,  
s. 25.

Sect. 25.

Definitions.

“High judicial office:”

25. In this Act, if not inconsistent with the context, the following expressions have the meaning hereinafter respectively assigned to them; that is to say,

“High judicial office” means any of the following offices; that is to say,

The office of Lord Chancellor of Great Britain or Ireland, or of paid Judge of the Judicial Committee of the Privy Council, or of Judge of one of Her Majesty’s Superior Courts of Great Britain and Ireland:

By s. 5 of App. Jur. Act, 1887, *post*, p. 124, the expression “high judicial office” includes the office of a lord of appeal in ordinary and of a member of the Judicial Committee of the Privy Council.

“Superior Courts:”

“Superior Courts of Great Britain and Ireland” means and includes,—

As to England, Her Majesty’s High Court of Justice and Her Majesty’s Court of Appeal, and the Superior Courts of Law and Equity in England as they existed before the constitution of Her Majesty’s High Court of Justice; and

As to Ireland, the Superior Courts of Law and Equity at Dublin; and

As to Scotland, the Court of Session:

“Error.”

“Error” includes a writ of error or any proceedings in or by way of error.

# SUPREME COURT OF JUDICATURE ACT, 1877

(40 VICT. c. 9).

An Act for amending the Supreme Court of Judicature Acts,  
1873 and 1875. [24th April, 1877.]

Act 1877,  
ss. 1—3.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act shall, so far as is consistent with the tenor thereof, be construed as one with the Supreme Court of Judicature Acts, 1873 and 1875, and together with the said Acts may be cited as the Supreme Court of Judicature Acts, 1873, 1875, 1877, and this Act may be cited separately as "The Supreme Court of Judicature Act, 1877."

## Sect. 1.

Construction  
and short title  
of Act.

2. It shall be lawful for Her Majesty to appoint a Judge of the High Court of Justice in addition to the number of Judges of that Court authorized to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875.

## Sect. 2.

Appointment  
of additional  
Judge of High  
Court of  
Justice.

This section was amended by s. 6 of S. C. Jud. Act, 1881, *post*, p. 105, which enables an additional Judge to be appointed from time to time in the Chancery Division when the number of Judges in that Division is reduced below five.

3. The Judge appointed in pursuance of this Act shall be in the same position as if he had been appointed a puisne Judge of the said High Court in pursuance of the Supreme Court of Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne Judges of the said High Court, and to their tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such Judges, and all other provisions relating to such puisne Judges, or any of them, with the exception of such provisions as apply to existing Judges only, shall apply to the additional Judge appointed in pursuance of this section in the same manner as they apply to the other puisne Judges of the said Court respectively. The Judge appointed in pursuance of this Act shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

## Sect. 3.

Position of  
additional  
Judge.

Act 1877,  
ss. 4—6.

Sect. 4.  
Style of  
Judges.

4. And whereas it is expedient that a uniform style should be provided for the ordinary Judges of the Court of Appeal and for the Judges of the High Court of Justice (other than the Presidents of Divisions): Be it enacted, that the ordinary Judges of the Court of Appeal shall be styled Lords Justices of Appeal, and the Judges of the High Court of Justice (other than the Presidents of Divisions) shall be styled Justices of the High Court.

This section was amended by s. 8 of S. C. Jud. Act, 1881, *post*, p. 106, which provides that the exception shall not apply to any Judge who may hereafter be appointed President of the Probate Divorce and Admiralty Division.

Sect. 5.  
Definition of  
puisne Judge.

5. A puisne Judge of the High Court of Justice means, for the purposes of this Act, a Judge of the High Court of Justice other than the Lord Chancellor, the Lord Chief Justice of England, *the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron*, and their successors respectively.

Repealed in part by S. L. Rev. Act, 1883.

Sect. 6.

6. [*Continuation, until 1st Jan., 1879, of s. 34 of 38 & 39 Vict. c. 77.*]

Repealed by S. L. Rev. Act, 1883.



# SUPREME COURT OF JUDICATURE (OFFICERS) ACT, 1879

(42 & 43 VICT. c. 78).

An Act to amend the Supreme Court of Judicature Acts.

[15th August, 1879.]

Act 1879,  
ss. 1—5.

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## *Preliminary.*

1. This Act shall be construed as one with the Supreme Court of Judicature Acts, 1873, 1875, and 1877, and may be cited together with those Acts as the Supreme Court of Judicature Acts, 1873 to 1879, and separately as the Supreme Court of Judicature (Officers) Act, 1879.

**Sect. 1.**  
Construction and short title of Act.  
36 & 37 Vict. c. 66.  
38 & 39 Vict. c. 77.  
40 & 41 Vict. c. 9.

2. This Act shall, except where it is otherwise expressed, come into operation on the twenty-eighth day of October, one thousand eight hundred and seventy-nine, which day is in this Act referred to as the commencement of this Act.

**Sect. 2.**  
Commencement of Act.

See s. 22, *infra*, as to rules of Court, with reference to the exception referred to in this section.

3. In this Act "existing" means existing at the commencement of this Act.

**Sect. 3.**  
Definition of "existing."

## *Central Office.*

4. There shall be established a central office of the Supreme Court of Judicature.

**Sect. 4.**  
Establishment of central office.

5. There shall be concentrated in and amalgamated with the central office the following offices; namely,

The record and writ clerks office;

The enrolment office;

The report office;

The offices of the masters of the Queen's Bench, Common Pleas, and Exchequer Divisions, including the bills of sale office;

**Sect. 5.**  
Certain offices amalgamated with central office.

**Act 1879,**  
**ss. 5—8, (1).**

The offices of the associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;  
The Crown office of the Queen's Bench Division;  
The Queen's Remembrancer's office;  
The office of the registrar of certificates of acknowledgments of deeds by married women;  
The office of the registrar of judgments; and  
such other offices of the Supreme Court as may from time to time be amalgamated with the central office by rules of Court.

See O. LXI., *post*, p. 455, as to the distribution in the Central Office of the staff of the various transferred offices.

**Sect. 6.**

Transfer of  
certain officers  
to central  
office.

- 6.** There shall be transferred to the central office,—
- (a) The existing record and writ clerks;  
The existing clerk of enrolments;  
The existing clerks in the report office;  
The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;  
The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions;  
The existing Queen's Remembrancer;  
The existing Queen's coroner and attorney, and the existing master of the Crown office other than the Queen's coroner and attorney;  
The existing registrar of certificates of acknowledgment of deeds by married women; and  
The existing registrar of judgments;  
with their respective clerks and messengers, or the clerks and messengers employed in their respective offices:
  - (b) Such of the existing officers employed under the registrars of the Probate Divorce and Admiralty Division as the Judges of that Division respectively select as necessary for the performance of the duties to be performed in the central office; and
  - (c) Such other officers of and persons employed in the Supreme Court or the offices thereof as are from time to time transferred to the central office by rules of Court.

**Sect. 7.**

Central office  
to be under  
control of  
masters of  
Supreme  
Court.

**7.** The central office shall be under the control and superintendence of officers called masters of the Supreme Court of Judicature.  
Provided that the existing clerk of enrolments shall, as long as he continues to hold that office, retain his control and superintendence over the business heretofore performed in his office and over the persons for the time being employed in the performance of that business.

The office of clerk of enrolments is to be abolished on the next vacancy. See s. 14, *infra*, and Schedule I. to this Act.

**Sect. 8.**

First masters  
of Supreme  
Court.

**8. (1.)** The first masters of the Supreme Court of Judicature shall be—  
The existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions;  
The existing Queen's coroner and attorney;

The existing Master of the Crown office other than the Queen's coroner and attorney;

The existing record and writ clerks; and

The existing associates in the Queen's Bench, Common Pleas, and Exchequer Divisions.

Act 1879,  
ss. 8, 9.

(2.) The salaries of the first masters of the Supreme Court shall be:

(a) In the case of each existing master of the Queen's Bench, Common Pleas, or Exchequer Divisions the salary to which he is entitled as such master at the commencement of this Act:

(b) In the case of the existing Queen's coroner and attorney, and the existing Master of the Crown office other than the Queen's coroner and attorney, the yearly sum of fifteen hundred pounds.

(c) In the case of every other Master of the Supreme Court, the salary to which he would have been entitled if he had been appointed a Master of the Queen's Bench, Common Pleas, or Exchequer Division, immediately before the commencement of this Act.

(3.) A vacancy in the office of any Master of the Supreme Court other than a Master being Queen's coroner and attorney or master of the Crown office, shall not be filled until the number of masters is reduced to eighteen.

The effect of this section is to give a uniform salary of 1,500*l.* per annum to the first master, but it makes no provision for the salaries of future masters, which must be regulated by s. 15 of this Act, and s. 20 of S. C. Jud. Act, 1881.

#### Sect. 9.

9. (1.) The right of filling any vacancy in the office of Master of the Supreme Court, or in any clerkship in the central office, shall, subject as in the next sub-section mentioned, be vested in the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, in rotation, and in such order as they by agreement among themselves determine.

Appointment  
and removal  
of officers of  
central office.

(2.) The right of filling any vacancy in the office of Queen's coroner and attorney, and of Master in the Crown office, shall be vested in the Lord Chief Justice of England, and the persons appointed to these offices respectively shall be by virtue of their appointment Masters of the Supreme Court.

(3.) Subject as aforesaid, the right of filling any vacancy in, and of making any new appointment in, or for the purposes of, the central office shall be vested in the Lord Chancellor, with the concurrence of the Treasury.

(4.) Any officer of the central office may be removed by a majority of the Judges mentioned in this section, with the approval of the Lord Chancellor, for reasons to be assigned in the order of removal.

See s. 21 of S. C. Jud. Act, 1881, *post*, p. 110, as to notice of any vacancy in any office of the Supreme Court.

By s. 19 of S. C. Jud. Act, 1884, *post*, p. 119, the right of filling vacancies mentioned in this section is to be exercised by the Lord Chancellor, the Lord Chief Justice, and the Master of the Rolls, in rotation.



**Act 1879,  
ss. 10—14.****Sect. 10.**Qualification  
of masters of  
Supreme  
Court.**Sect. 11.**Tenure of  
masters of  
Supreme  
Court.**Sect. 12.**Business of  
central office.

**10.** A person shall not be qualified to be appointed a Master of the Supreme Court, unless he is or has been a practising barrister or solicitor of five years' standing, or has practised for five years as a special pleader or as a special pleader and barrister; but nothing in this section shall affect the qualification of any existing officer of the Supreme Court to be appointed to any office dealt with by this Act.

**11.** Every Master of the Supreme Court shall hold office during good behaviour.

**12.** (1.) The business to be performed in the central office shall, subject to rules of Court, comprise all the business performed in the offices by or in pursuance of this Act amalgamated with the central office, and shall be distributed among the several officers of the central office in such manner as may be directed by rules of Court.

(2.) The several officers of the central office shall be interchangeable one with another, and shall be capable of performing and liable to perform the duties of each other in any department of the office, and generally shall perform such duties and have such powers in relation to the business of the Supreme Court as may be directed by rules of Court, subject to this qualification, that the duties required to be performed by any officer transferred to the central office by or in pursuance of this Act shall, except as far as they are modified with his consent, be the same as or analogous to those which he performed before being so transferred.

(3.) Subject as aforesaid, all officers of the central office shall continue to perform the duties heretofore performed by them in their respective offices, and to have and exercise the powers heretofore vested in them, in the same manner, as nearly as may be, as if this Act had not passed.

See s. 77 of S. C. Jud. Act, 1873, *ante*, p. 54.

As to the Central Office, see O. LXI., *post*, p. 455.

**Sect. 13.**Classification  
of clerks of  
central office.

**13.** The clerks employed in the central office shall be classified as principal clerks, first-class clerks, second-class clerks, and copying-clerks, or in such other manner as the Lord Chancellor, with the concurrence of the Treasury, from time to time directs.

**Sect. 14.**Abolition of  
certain offices  
and continu-  
ance of others.

**14.** (1.) The offices specified in the first part of the First Schedule to this Act are hereby abolished as from the commencement of this Act.

(2.) Each of the offices specified in the second part of the First Schedule to this Act shall be abolished on the occurrence of the next vacancy therein.

The office of Clerk of the Petty Bag is now abolished, a vacancy having occurred therein.

(3.) On and after the occurrence of the next vacancy in any of the offices specified in the third part of the First Schedule to this Act, the senior master for the time being of the Supreme Court shall hold and perform the duties of the office, with such additional salary in respect of the office of Queen's remembrancer as the Lord Chancellor, with the concurrence of the Treasury, may determine.

(4.) Provided as follows:

(a) For the purposes of this section the existing masters of the Queen's Bench, Common Pleas, and Exchequer Divisions

shall collectively rank as senior to the other first masters of the Supreme Court ;

Act 1879,  
ss. 14—17.

- (b) Subject as aforesaid, each of the first masters of the Supreme Court shall, for the purposes of this section, rank in seniority according to the date of his first appointment to an office in the Supreme Court, or in any Court of which the jurisdiction has been transferred to the Supreme Court.

### *Salaries and Pensions.*

#### Sect. 15.

15. (1.) The salaries of the several officers of the Supreme Court shall be of such amounts as the Lord Chancellor, with the concurrence of the Treasury, from time to time determines, and every such officer shall be deemed to be, for the purposes of salary and pension, a permanent civil servant of the State.

As to salaries,  
pensions, &c.,  
of officers of  
Supreme  
Court.

(2.) The salaries of all officers of the Supreme Court shall be paid out of money provided by Parliament.

Every pension and compensation shall be paid out of money provided by Parliament.

S. 85 of S. C. Jud. Act, 1873, *ante*, p. 58, as to salaries and pensions, is repealed by this Act, and the provisions of this section are now substituted for it.

S. 14 of the Courts of Justice (Salaries and Funds) Act, 32 & 33 Vict. c. 91, enabled the Treasury, with the concurrence of the Lord Chancellor, and in the case of certain offices with the concurrence of certain other specified Judges, to modify the salaries of officers in the Chancery, Bankruptcy, and Admiralty Courts.

S. 20 of S. C. Jud. Act, 1881, *post*, p. 109, extends the provisions of the 32 & 33 Vict. c. 91, s. 14, to all officers of the Supreme Court and all officers in Lunacy, saving existing rights. S. 21, *infra*, defines the term "officer" for the purposes of that Act.

The effect of this legislation appears to be to modify sub-s. 1 of s. 15 in so far as it relates to the mode of fixing officers' salaries. In order to give effect to this change s. 21 of S. C. Jud. Act, 1881, *post*, p. 110, provides that notice of any vacancy in any office must be given to the Lord Chancellor and the Treasury, and for one month the office must not be filled up without their assent.

By s. 20 of S. C. Jud. Act, 1884, a Civil Service certificate is a precedent to salary.

By virtue of an Order in Council of June, 1870, the examination may, for special causes, be dispensed with.

#### Sect. 16.

16. The application for a pension under this Act shall be by a petition to the Lord Chancellor, setting forth the service and emoluments of the applicant in such form and with such particulars as the Lord Chancellor directs.

Mode of appli-  
cation for  
pension.

If the Lord Chancellor approves of the application he shall transmit it to the Treasury for their examination and award, and the Treasury shall thereupon inquire into the application, and if the claim made thereby is established to their satisfaction, shall award and direct payment of the pension to which the applicant is entitled.

#### Sect. 17.

17. It shall be lawful for the Lord Chancellor from time to time to declare by writing signed by him that any office entitling to a pension under this Act is an office for the due and efficient discharge of the duties of which professional or other peculiar qualifications, not ordinarily to be acquired in the public service, are required, and

Power to  
declare office  
professional,  
and add years  
to service of  
holder thereof.



**Act 1879,  
ss. 17-22.**

that it is in the interest of the public that persons be appointed thereto at an age exceeding that at which public service ordinarily begins; and thereupon it shall be lawful for the Treasury to order that when the holder of any such office retires from public service, a specified number of years, not exceeding twenty, shall, in computing the amount of pension payable to the officer, be added to the number of years during which he has actually served.

22 Vict. c. 26.

Every such order shall have the same effect as an order or warrant made under section four of the Superannuation Act, 1859.

Under this section orders have been made by which the different officers of the Supreme Court have been benefited.

**Sect. 18.**

Power for  
Lord Chan-  
cellor to re-  
move disabled  
officer.

18. If any officer of the Supreme Court, being afflicted with any infirmity which disables him from the due execution of his office, refuses to resign, or becomes incapable of resigning his office, it shall be lawful for the Lord Chancellor by order to remove him from his office.

**Sect. 19.**

Provision as to  
persons en-  
titled to pen-  
sions under  
previous Acts.

19. (1.) Where a person has at the commencement of this Act a right to succeed to an office to which a pension or superannuation allowance is attached under any previous Act, nothing in this Act shall prejudicially affect his right to claim a pension or allowance under that Act.

(2.) Any officer of the Supreme Court who is or might become entitled to a pension or superannuation allowance under any previous Act may, if he thinks fit, instead of claiming a pension or allowance under that Act, claim a pension under this Act, and thereupon the same proceedings shall be taken as if he had been entitled to a pension under this Act.

**Sect. 20.**

Conditions of  
obtaining pen-  
sions under  
this Act.

20. An officer of the Supreme Court appointed after the commencement of this Act shall not be entitled to a pension under this Act unless he has been admitted to his office with a certificate from the Civil Service Commissioners.

Provided that the Lord Chancellor may from time to time, with the concurrence of the Treasury, make, revoke, and alter orders, declaring that this section shall not apply to any office or class of offices specified in the order, and the application of this section shall be limited in accordance with any such order.

See s. 17 of the Superannuation Act, 1859 (22 Vict. c. 26).

**Sect. 21.**

Application of  
salary and  
pension provi-  
sions to officers  
in lunacy.

21. For the purposes of the provisions of this Act relating to salaries and pensions, an officer in lunacy shall be in the same position as if he were an officer of the Supreme Court.

See s. 15 of this Act, *supra*, and note thereto.

**Sect. 22.**

Making rules  
of Court.  
38 & 39 Vict.  
c. 77.  
39 & 40 Vict.  
c. 59.

*Rules of Court.*

22. (1.) Section seventeen of the Supreme Court of Judicature Act, 1875, as amended by section seventeen of the Appellate Jurisdiction Act, 1876, shall extend to authorize the making, in pursuance of those sections, of rules of Court under or for the purposes of this Act, and under or for the purposes of any Act passed after the passing



of this Act, which expressly or by implication authorizes or directs the making of rules of Court, and also under or for the purposes of any Act passed before the passing of this Act, which, so far as unrepealed, expressly or by implication authorizes or directs the making of any orders, rules, or regulations for any purpose for which rules of Court can be made under the above-mentioned sections, or for any similar purpose; provided that where the concurrence of the Treasury is required in making rules of Court, or any such orders, rules, or regulations, rules of Court under this section shall not be made without that concurrence.

Act 1879,  
ss. 22—25.

(2.) Such rules of Court as are requisite for bringing this Act into operation shall be made as soon as may be after the passing of this Act, but no rules of Court made under this Act shall come into operation before the commencement of this Act.

As to rules of Court in general, see S. C. Jud. Act, 1875, s. 17, *ante*, p. 74; App. Jur. Act, 1876, s. 17, *ante*, p. 89; S. C. Jud. Act, 1881, s. 19, *post*, p. 109; S. C. Jud. Act, 1884, s. 23, *post*, p. 120.

By numerous Acts of Parliament, rules for carrying their provisions into operation or otherwise supplementing them are directed to be made by various bodies of Judges. The object of this section is to substitute the ordinary Rule Committee for these miscellaneous bodies. By this Act, and by the Civil Procedure Acts Revision Acts of 1879 and 1881, the provisions of several Acts, which designated various bodies of Judges to make rules under them, have been repealed. These repeals bring into effect the provisions of this section.

### Supplemental.

**23.** Subject to the express provisions of this Act, the officers transferred by or in pursuance of this Act shall have the same rank and hold their offices by the same tenure and upon the same terms and conditions, and receive the same salaries, and, if entitled to pensions, be entitled to the same pensions, as if this Act had not passed.

Sect. 23.  
Saving rights  
of officers  
transferred.

See s. 77 of S. C. Jud. Act, 1873, *ante*, p. 54.

**24.** Where a doubt exists as to the position under this Act of any existing officer affected by this Act, or whether any person is an officer of the Supreme Court within the meaning of this Act, the doubt may be determined by rules of Court, subject to this proviso, that a rule of Court made under this section shall not alter the tenure of office, rank, pension, if any, or salary of the officer, or require him without his consent to perform any duties other than duties analogous to those which he has already performed.

Sect. 24.  
Doubts as to  
status, &c., of  
officers to be  
determined by  
rules of Court.

See s. 81 of S. C. Jud. Act, 1873, *ante*, p. 56. See also s. 21 of S. C. Jud. Act, 1881, *post*, p. 110.

**25.** If any person deems himself aggrieved by reason of any right or privilege, customary or otherwise, being prejudicially affected by this Act or the Courts of Justice Building Act, 1865, or any Act amending the same, or by anything done under any such Act, he may present a petition to the Lord Chancellor stating the circumstances of the case, and asking for the compensation to which the petitioner deems himself entitled; and if the Lord Chancellor thinks the petitioner entitled to compensation, he shall transmit the petition to the Treasury, stating the grounds on which he

Sect. 25.  
Compensation  
for prejudice  
to right or  
privilege.  
28 & 29 Vict.  
c. 48.

Act 1879,  
ss. 25—29.

thinks the petitioner so entitled, and the Treasury shall have discretion to award such compensation, if any, as in their opinion is just and reasonable.

**Sect. 26.**

Saving as to  
payment of  
fees.

**26.** Nothing in or done under this Act shall affect any liability to the payment of fees payable to any officer or in any office affected by this Act, and all such fees shall, subject to any regulations with regard thereto which may from time to time be made by rules of Court, continue to be payable in the same manner and to the same persons as heretofore.

As to Court fees, see s. 26 of S. C. Jud. Act, 1875, *ante*, p. 80, and note thereto.

**Sect. 27.**

Construction  
of enactments,  
&c., referring  
to officers or  
offices affected  
by this Act.

**27.** Any enactment or document referring to an officer or office abolished by or under this Act, shall, as far as it continues applicable, be construed as referring to the officer or office substituted by or under this Act, and rules of Court may be made for determining what officer or office is so substituted.

See O. LX., r. 3, *post*, p. 454, which has been made under the power given by this section.

**Sect. 28.**

Name of new  
Law Courts.  
28 & 29 Vict.  
c. 48.  
28 & 29 Vict.  
c. 49.

**28.** The buildings erected under the Courts of Justice Building Act, 1865, and the Courts of Justice Concentration (Site) Act, 1865, together with all additions thereto, shall be styled the Royal Courts of Justice.

**Sect. 29.**

Repeal of  
enactments  
in Second  
Schedule.  
36 & 37 Vict.  
c. 66.  
Section 14.  
Section 29.

**29.** Whereas by reason of the provisions of the Supreme Court of Judicature Act, 1873, and the Acts amending the same, including this Act, divers enactments relating to officers and offices of the Supreme Court, and to the making of orders, rules and regulations, for purposes connected with the Supreme Court, have become unnecessary, and it is expedient that they be specifically repealed, therefore the Acts specified in the Second Schedule to this Act are hereby repealed to the extent specified in the third column of that schedule.

Provided that—

(1.) This repeal shall not affect—

- (a) Anything done or suffered before the commencement of this Act under any enactment repealed by this Act; or
- (b) Any right, duty, or liability acquired, imposed, or incurred by or under any enactment hereby repealed; or
- (c) Any penalty, forfeiture, or punishment incurred in respect of any offence committed against any enactment hereby repealed; or
- (d) The institution or prosecution to its termination of any legal proceeding, or other remedy for ascertaining, enforcing, or recovering any such liability, penalty, forfeiture, or punishment as aforesaid; or
- (e) The validity of any rule, order, or regulation made under any enactment hereby repealed; and

(2.) In particular, but without prejudice to the generality of the foregoing provisions, the repeal effected by this section shall not deprive any person who at the commencement of this Act enjoys any compensation, pension, retiring annuity,

superannuation allowance, or salary mentioned in any enactment repealed by this section, of his right to receive the same compensation, pension, retiring annuity, superannuation allowance, or salary, or of any right he may have to receive any progressive or prospective increase of salary, or to obtain any promotion, or succession, or any pension, retiring annuity, or superannuation allowance, or affect or diminish any such right, or affect any right of appointment vested in any existing Judge, or alter the duties, conditions, or restrictions attached to any office held by any existing officer; and

Act 1879,  
s. 29.

- (3.) This repeal shall not revive any enactment, right, office, privilege, matter, or thing not in force or existing at the commencement of this Act.

Schedules.

## SCHEDULES.

### FIRST SCHEDULE.

Sched. I.

#### FIRST PART.

*Offices to be abolished as from commencement of Act.*

The offices of—

Record and Writ Clerk :

Master in the Queen's Bench, Common Pleas, and Exchequer

Divisions of the High Court of Justice :

Associate in the Queen's Bench, Common Pleas, and Exchequer

Divisions of the High Court of Justice.

#### SECOND PART.

*Offices to be abolished on next vacancy.*

The offices of—

Clerk of Enrolments :

Clerk of Petty Bag.

#### THIRD PART.

*Offices to be filled on vacancy by the Senior Master of the Supreme Court.*

The offices of—

Queen's Remembrancer :

Registrar of Certificates of Acknowledgments of Deeds by

Married Women :

Registrar of Judgments.

### SECOND SCHEDULE.

Sched. II.

*(Enactments Repealed.)*

[The list of enactments contained in this schedule has been omitted as unnecessary to produce.]



# SUPREME COURT OF JUDICATURE ACT, 1881

(44 & 45 VICT. c. 68).

Act 1881,  
ss. 1, 2.

An Act to amend the Supreme Court of Judicature Acts; and  
for other purposes. [27th August, 1881.]

WHEREAS it is expedient to amend the constitution of Her Majesty's Court of Appeal, and to make further provision concerning the Supreme Court of Judicature and the officers thereof, and such other matters as are hereinafter mentioned :

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

## Sect. 1.

Short title.

1. This Act may be cited as "The Supreme Court of Judicature Act, 1881."

## Sect. 2.

Master of the  
Rolls to be  
Judge of  
appeal only.

2. From and after the passing of this Act, the present and every future Master of the Rolls shall cease to be a Judge of Her Majesty's High Court of Justice, but shall continue, by virtue of his office, to be a Judge of Her Majesty's Court of Appeal, and shall retain the same rank, title, salary, right of pension, patronage, and powers of appointment or dismissal, and all other powers, privileges, and disqualifications now and heretofore belonging to the said office of Master of the Rolls and all other duties of the said office except that of a Judge of Her Majesty's High Court of Justice: Provided that the present Master of the Rolls shall not by virtue of this Act be subject to any disqualification to which he is not by law now subject, nor shall be required to act under any commission of assize, nisi prius, oyer and terminer, or gaol delivery; and the existing personal officers of the Master of the Rolls shall continue to be attached to him and be under his authority, and to hold their respective offices upon the same tenure and in the same manner in all respects as if this Act had not passed: Provided also, that any Master of the Rolls to be hereafter appointed shall be under an obligation to go circuits and to act as a commissioner

under commissions of assize, or other commissions authorised to be issued in pursuance of the Supreme Court of Judicature Act, 1873, in the same manner in all respects as he would have been under the last-mentioned Act, or any Acts or Act amending the same, if he had continued to be a Judge of the Chancery Division of the High Court of Justice.

Act 1881,  
ss. 2—6.

See s. 4 of S. C. Jud. Act, 1875, *ante*, p. 66, and note thereto.

3. The vacancy now existing among the ordinary Judges of the said Court of Appeal shall not be filled up, and the number of ordinary Judges of that Court shall henceforth be five.

Sect. 3.  
Existing  
vacancy in  
Court of  
Appeal not to  
be filled up.

See s. 4 of S. C. Jud. Act, 1875, *ante*, p. 66, and note thereto.

4. The President for the time being of the Probate Divorce and Admiralty Division of the High Court of Justice shall henceforth be an *ex-officio* Judge of Her Majesty's Court of Appeal with the same powers, and in the same manner in all respects as the other *ex-officio* Judges thereof; he shall not be entitled in the said Court to any precedence over any existing Judge to which he would not have been entitled as a Judge of the Supreme Court of Judicature if this Act had not passed.

Sect. 4.  
President of  
Probate Divi-  
sion to be an  
*ex-officio* Judge  
of Court of  
Appeal.

See s. 4 of S. C. Jud. Act, 1875, *ante*, p. 66, and note thereto, and see s. 3 of S. C. Jud. Act, 1884, *post*, p. 114, as to the precedence of the President of the P. D. and A. Division.

5. It shall be lawful for Her Majesty to supply the vacancy in the High Court of Justice, to be occasioned by the removal therefrom of the Master of the Rolls, by the appointment, immediately after the passing of this Act, and from time to time afterwards, of a Judge, who shall be in the same position as if he had been appointed a puisne Judge of the said High Court in pursuance of the Judicature Acts, 1873 and 1875; and all the provisions of the Supreme Court of Judicature Acts, 1873 and 1875, for the time being in force in relation to the qualification and appointment of puisne Judges of the said High Court, and to their duties and tenure of office, and to their precedence, and to their salaries and pensions, and to the officers to be attached to the persons of such Judges, and all other provisions relating to such puisne Judges, or any of them, with the exception of such provisions as apply to existing Judges only, shall apply to the Judge appointed in pursuance of this section, in the same manner as they apply to the other puisne Judges of the said High Court respectively. The Judge so appointed shall be attached to the Chancery Division of the said High Court, subject to such power of transfer as is in the Supreme Court of Judicature Act, 1873, mentioned.

Sect. 5.  
New Judge of  
High Court  
instead of  
Master of the  
Rolls.

36 & 37 Vict.  
c. 66.  
38 & 39 Vict.  
c. 7.

6. The power given to Her Majesty by the Supreme Court of Judicature Act, 1877, to appoint a Judge of the High Court of Justice in addition to the number of Judges authorised to be appointed by the Supreme Court of Judicature Acts, 1873 and 1875, may be exercised by Her Majesty from time to time, so as at all times to make due provision for the business of the Chancery

Sect. 6.  
Judge under  
40 & 41 Vict.  
c. 9.

**Act 1881,  
ss. 6—9.**

Division of the High Court of Justice: Provided that no such appointment shall be made unless or until the number of Judges attached for the time being to the Chancery Division of the High Court, other than the Lord Chancellor, is, by death, resignation, or otherwise, reduced below five.

See s. 2 of S. C. Jud. Act, 1877, *ante*, p. 93, and note thereto.

**Sect. 7.**

Rolls Court  
chambers and  
clerks, &c.

7. The Lord Chancellor shall have power by order under his hand to direct that the Court and chambers, heretofore used by the Master of the Rolls as a Judge of the Chancery Division of the High Court of Justice, shall (so long as may be necessary or convenient) be used by such Judge of the said Chancery Division of the said High Court as shall be in any such order in that behalf named; and the chief and other clerks, and other officers, heretofore attached to the said Court and chambers respectively, shall (subject to any rules or orders of Court) be and continue attached to the Judge to be named in any such order, and, after such Court and chambers shall have ceased to be so used, to the Judge to whom the business previously transacted in such Court and chambers respectively shall be for the time being assigned.

**Sect. 8.**

Title of jus-  
tices.  
40 & 41 Vict.  
c. 9.

8. And whereas it is expedient to amend section four of the Supreme Court of Judicature Act, 1877: Be it enacted that the exception of Presidents of Divisions from the enactment that the Judges of the High Court of Justice shall be styled Justices of the High Court shall not apply to any Judge to be hereafter appointed who may be or become President of the Probate Divorce and Admiralty Division of the High Court of Justice.

See s. 4 of S. C. Jud. Act, 1877, *ante*, p. 94.

**Sect. 9.**

Appeals under  
Divorce Act.

9. All appeals which, under section fifty-five of the Act of the twentieth and twenty-first years of her present Majesty, chapter eighty-five, or under any other Act, might be brought to the full Court established by the said first-mentioned Act, shall henceforth be brought to Her Majesty's Court of Appeal and not to the said full Court.

The decision of the Court of Appeal on any question arising under the Acts relating to divorce and matrimonial causes, or to the declaration of legitimacy, shall be final, except where the decision either is upon the grant or refusal of a decree on a petition for dissolution or nullity of marriage, or for a declaration of legitimacy, or is upon a question of law on which the Court of Appeal give leave to appeal; and, save as aforesaid, no appeal shall lie to the House of Lords under the said Acts.

Subject to any order made by the House of Lords, in accordance with the Appellate Jurisdiction Act, 1876, every appeal to the House of Lords against any such decision shall be brought within one month after the decision appealed against is pronounced by the Court of Appeal if the House of Lords is then sitting, or, if not, within fourteen days after the House of Lords next sits.

This section, so far as is consistent with the tenor thereof, shall be construed as one with the said Acts.

The jurisdiction of the Full Court of Divorce as established under the Divorce



Acts was not one of the jurisdictions vested in the Court of Appeal by s. 18 of S. C. Jud. Act, 1873, and it was therefore held that that Court still existed, and that in divorce cases no appeal lay to the Court of Appeal: *Westhead v. Westhead*, 2 P. D. 1; *Wallis v. Wallis*, 2 P. D. 141. The Act of 1881 removes this anomaly, and divorce appeals, when they lie, go to the Court of Appeal.

As to the right of appeal given by the Divorce Acts, see 20 & 21 Vict. c. 85, s. 55; 21 & 22 Vict. c. 103, s. 18; and 23 & 24 Vict. c. 144, ss. 1, 2. The time for appeal is still governed by 23 & 24 Vict. c. 144: *Ahier v. Ahier*, 10 P. D. 110. See also the next section.

Act 1881,  
ss. 9—13.

10. No appeal from an order absolute for dissolution or nullity of marriage shall henceforth lie in favour of any party who, having had time and opportunity to appeal from the decree nisi on which such order may be founded, shall not have appealed therefrom.

Sect. 10.

As to appeal against decrees nisi for dissolution or nullity of marriage.

11. A Judge who was not present and acting as a member of a Divisional Court of the High Court of Justice, at the time when any decision which may be appealed from was made, or at the argument of the case decided, shall not, for the purposes of the fourth section of the Supreme Court of Judicature Act, 1875, be deemed to be, or to have been, a member of such Divisional Court.

Sect. 11.

Qualification of Judges to sit on appeals.

12. In any case of urgency arising during the absence from illness or any other cause, or during any vacancy in the office of any Judge of the High Court of Justice to whom any cause or matter may have been, according to the course of the said Court, or of any Division thereof, specially assigned, it shall be lawful for any other Judge of the said Court, who may consent so to do, to hear and dispose of any application for an injunction or other interlocutory order for or on behalf of the Judge so absent, or in the place of the Judge whose office may have so become vacant.

Sect. 12.

In cases of urgency, &c., one Judge may officiate for another.

This section supplements the power given by s. 51 of S. C. Jud. Act, 1873, ante, p. 45. See *Serff v. Luff*, 28 Sol. J. 432; *Re Lane*, 30 Sol. J. 304.

13. The Judges to be placed on the rota for the trial of election petitions in England in each year, under the provisions of the Parliamentary Elections Act, 1868, or any Act amending the same, shall henceforth be selected out of the Judges of the Queen's Bench Division of the High Court of Justice in such manner as may be provided by any rules of Court to be made for that purpose; and, subject thereto, shall be selected as follows (that is to say), the Judges of the Queen's Bench Division of the said High Court shall, on or before the fourth day of November in every year, select, by a majority of votes, three of the puisne Judges of such Division (none of whom shall be a member of the House of Lords) to be placed on the rota for the trial of election petitions during the ensuing year.

Sect. 13.

Selection of Judges for trial of election petitions.  
31 & 32 Vict. c. 125.

If in any case the Judges of the said Division, present at the time of their meeting to make such selection, are equally divided in their choice of any Judge to be placed on the rota, the Lord Chief Justice of England, or, in case of his absence, the senior Judge then present, shall have a second or casting vote.

The choice of a Judge to fill any occasional vacancy upon the rota, or to assist the Judge on the rota as an additional Judge, shall be made in like manner.

**Act 1881,  
ss. 13—15.**

The Judges, who at the time of the passing of this Act shall be upon the rota for the trial of election petitions, shall continue upon such rota until the end of the year for which they have been appointed, in the same manner as if this Act had not passed.

If at the end of the year for which any such Judge shall have been appointed, whether before or after the passing of this Act, any trial or other matter shall be pending before him, either alone or together with any other Judge, and not concluded, or if, after the conclusion of any such trial or of the hearing of any such matter, judgment shall not have been given thereon, it shall be lawful for every such Judge to proceed with and to conclude such pending trial or other matter, and to give judgment thereon, after the end of such year, in the same manner in all respects as if the year for which he was appointed had not expired.

This section appears to supersede, though it does not expressly repeal, s. 38 of S. C. Jud. Act, 1873, *ante*, p. 36.

By s. 2 of the Parliamentary Elections and Corrupt Practices Act, 1879 (42 & 43 Vict. c. 75), election petitions are to be tried before two Judges instead of one as heretofore.

#### **Sect. 14.**

Jurisdiction of High Court in registration and election cases.

28 & 29 Vict. c. 36.

31 & 32 Vict. c. 125.

35 & 36 Vict. c. 60.

41 & 42 Vict. c. 26.

**14.** The jurisdiction of the High Court of Justice to decide questions of law, upon appeal or otherwise, under the Act of the sixth and seventh years of Her Majesty, chapter eighteen, the County Voters Registration Act, 1865, the Parliamentary Elections Act, 1868, the Corrupt Practices (Municipal Elections) Act, 1872, the Parliamentary and Municipal Registration Act, 1878, or any of the said Acts, or any Act amending the same respectively, shall henceforth be final and conclusive, unless in any case it shall seem fit to the said High Court to give special leave to appeal therefrom to Her Majesty's Court of Appeal, whose decision in such case shall be final and conclusive.

See s. 19 of S. C. Jud. Act, 1873, *ante*, p. 10, and notes thereto. In *Harmon v. Park*, 6 Q. B. D. 323, before this Act, it was held that an appeal lay from an interlocutory order of a Divisional Court relating to a Municipal Election Petition. It seems doubtful whether an interlocutory order is a decision on a question of law within the meaning of this section. Notwithstanding s. 93, sub-s. 7 of the Municipal Corporations Act, 1882, which enacts that the decision of the High Court upon a petition questioning a municipal election shall be final, an appeal, if leave be given, lies from a judgment of the Q. B. D. upon a petition of that nature to the C. A., owing to s. 242 of the statute above mentioned, which, in effect, incorporates this section: *Line v. Warren*, 14 Q. B. D. 548.

#### **Sect. 15.**

Quorum in Court of Criminal Appeal.

**15.** The jurisdiction and authority in relation to questions of law arising in criminal trials, which, under section forty-seven of the Supreme Court of Judicature Act, 1873, is now vested in the Judges of the High Court of Justice, may be exercised by any five or more of such Judges, notwithstanding the abolition of the offices of Lord Chief Justice of the Common Pleas and Lord Chief Baron of the Exchequer; provided that the Lord Chief Justice of England shall always be one of such Judges, unless, by writing under his hand or by the certificate in writing of his medical attendant, it shall appear that he is prevented, by illness or otherwise, from being present at any Court duly appointed to be held for the pur-



pose aforesaid, in which case the presence of the said Lord Chief Justice at such Court shall not be necessary.

Act 1881,  
ss. 15—20.

See s. 47 of S. C. Jud. Act, 1873, *ante*, p. 41.

16. The proceedings for the ordaining or nominating of sheriffs, directed by an Act passed in the fourteenth year of King Edward the First, intituled "How long a Sheriff shall tarry in his Office," and by another Act passed in the twenty-fourth year of King George the Second, intituled "An Act for the abbreviation of Michaelmas Term," to take place at the Exchequer, shall henceforth in every year take place in the Queen's Bench Division of the High Court of Justice, at the same time and in the same manner as hath been heretofore accustomed in the Court of Exchequer.

Sect. 16.  
Proceedings  
with regard to  
nomination of  
sheriffs.  
24 Geo. 2, c. 48.

17. The presentation and swearing of the Lord Mayor of the city of London, which has heretofore taken place in the Court of Exchequer at Westminster after every annual election into that office, pursuant to charters granted by Her Majesty's Royal predecessors to the citizens of London, and to the hereinbefore recited Act of King George the Second, shall henceforth take place in the Queen's Bench Division of Her Majesty's High Court of Justice, or before the Judges of that Division, at the same time and in the same manner as hath been heretofore accustomed in the Court of Exchequer.

Sect. 17.  
Presentation  
and swearing  
of Lord Mayor  
of London.

18. The power of making general orders for fixing the times of holding sessions of the Central Criminal Court established by the Act of the fourth and fifth years of King William the Fourth, chapter thirty-six, which by section fifteen of that Act was given to any eight or more of the Judges of the Superior Courts of Westminster, may henceforth be exercised from time to time by any four or more of the Judges of Her Majesty's High Court of Justice.

Sect. 18.  
As to fixing  
Sessions of  
Central Crimi-  
nal Court.

19. The power of making Rules of Court, conferred by section seventeen of the Appellate Jurisdiction Act, 1876, upon the several Judges therein mentioned, shall henceforth be vested in and exercised by any five or more of the following persons, of whom the Lord Chancellor shall be one; namely, the Lord Chancellor, the Lord Chief Justice of England, the Master of the Rolls, the President of the Probate Divorce and Admiralty Division of the High Court of Justice, and four other Judges of the Supreme Court of Judicature to be from time to time appointed for the purpose by the Lord Chancellor in writing under his hand, such appointment to continue for such time as shall be specified therein.

Sect. 19.  
Power to make  
rules under  
39 & 40 Vict.  
c. 59.

This section alters the constitution of the Rule Committee of Judges as fixed by App. Jur. Act, 1876. That Act had amended s. 17 of S. C. Jud. Act, 1875. See *ante*, p. 74.

20. The provisions of section fourteen of the Courts of Justice (Salaries and Funds) Act, 1869, shall henceforth be applicable to all officers of the Supreme Court of Judicature and all officers in Lunacy in the same manner and subject to the same conditions as is thereby enacted concerning the officers in the Courts of Chancery, Bankruptcy, and Admiralty: Provided always, that any order to be

Sect. 20.  
Extension of  
32 & 33 Vict.  
c. 91, s. 14.



Act 1881,  
ss. 20—22.

made by the Treasury as to any officers not heretofore included within that section of the said Act, shall be made with the concurrence of the Lord Chancellor, and also in the case of officers who are appointed by any other persons or person than the Lord Chancellor either solely or jointly with the Lord Chancellor, with the concurrence of the persons or person having such power of appointment: Provided also, that no order made under this Act which would not have been heretofore authorized by the said section or otherwise by law shall without his consent apply to any officer holding any office at the time of the commencement of this Act.

Salaries and  
Funds Act,  
1869.

By s. 14 of the Courts of Justice (Salaries and Funds) Act, 1869—

“The Treasury may from time to time by order made with the concurrence of the Lord Chancellor, and also with the concurrence of the Master of the Rolls in the case of officers who are appointed or whose salaries are fixed by the Master of the Rolls either solely or jointly with the Lord Chancellor, and with the concurrence of the Judge of the Court of Admiralty in the case of the officers of that Court, increase or diminish the number of officers in the Courts of Chancery, Bankruptcy, and Admiralty, and the amounts of the salaries of such officers, and determine the conditions on which they are to hold their offices, and regulate the expenses and contingencies incurred in respect of the said Courts or the officers belonging thereto.

“An officer appointed after the commencement of this Act shall take his office subject to any order that may thereafter be made under this section in relation to the abolition or modification of his office, but no order made under this section shall, without his consent, apply to any officer holding office at the date of the commencement of this Act, and when the conditions on which any officer is to hold his office, and the salary to be paid to him has been determined by any order under this section for the time being in force, no subsequent order under this section shall apply to such officer without his consent.

“Any order made under this section shall be laid before both Houses of Parliament within fourteen days after it is made if Parliament be then sitting, or if not within fourteen days after the commencement of the next session. It shall also be published in the *London Gazette*, and when so published shall be of the same force as if it were enacted in this Act, but subject to being varied or repealed from time to time by other orders made in like manner under this Act, and any enactment inconsistent with such order shall be repealed from and after the date of any such publication.

“The term ‘officer’ in this section means all officers, clerks, messengers, and persons who are mentioned in the second parts of the third and fourth schedules of this Act, or who are for the time being employed in the said Courts of Chancery, Bankruptcy and Admiralty, or any of them, or the offices connected therewith.”

#### Sect. 21.

Notice of  
vacancies in  
offices of Su-  
preme Court.

21. Upon the occurrence henceforth of any vacancy in any office of the Supreme Court of Judicature notice thereof shall be forthwith given to the Lord Chancellor and also to the Treasury by the senior continuing or surviving officer of the department in which the vacancy shall occur, and no appointment shall be made to fill such vacancy within the period of one month next after the date of such notice without the assent of the Lord Chancellor, given with the concurrence of the Treasury; and the Lord Chancellor may, if it be necessary, make provision in such manner as he thinks fit for the temporary discharge in the meantime of the duties of such office. The word “officer” in this Act shall not include the office of any Judge of the Supreme Court of Judicature.

See s. 77 of S. C. Jud. Act, 1873, *ante*, p. 54, and s. 9 of S. C. Jud. Act, 1879, *ante*, p. 97.

#### Sect. 22.

Appointment  
of district  
registrar.

22. And whereas by the Judicature Acts, 1873, 1875, and 1877, and the Supreme Court of Judicature (Officers) Act, 1879, no pro-

vision is made for the appointment of district registrars of the High Court of Justice other than persons holding or having held the offices in section sixty of the Supreme Court of Judicature Act, 1873, and section thirteen of the Supreme Court of Judicature Act, 1875, respectively mentioned: Be it enacted, that if on any vacancy in the office of district registrar under the said Acts, or upon the appointment by any Order in Council to be hereafter made of any new district within which there shall be a district registrar (unless by such Order in Council it shall be otherwise directed), it shall appear to the Lord Chancellor, with the concurrence of the Treasury, that from the nature and amount of the business to be transacted by such district registrar it is expedient that such office should be conferred upon a person not so qualified as aforesaid, it shall be lawful for the Lord Chancellor, with the concurrence of the Treasury, to appoint to such office any solicitor of the Supreme Court of Judicature of not less than five years' standing.

A district registrar shall not, either by himself or his partner, be directly or indirectly engaged as solicitor or agent for a party to any proceeding whatsoever in the district registry of which he is registrar.

See s. 60 of S. C. Jud. Act, 1873, *ante*, p. 48, and note thereto.

**23.** The Lord Chancellor may from time to time, with the concurrence of the Treasury, make regulations with respect to—

- (a) The appointment, removal, payment, and duties of persons to keep order in the Royal Courts of Justice, provided that no such regulation shall affect any right of appointment enjoyed by any person at the time of the commencement of this Act, without his consent thereto:
- (b) The appointment, removal, payment, and duties of persons charged with the care and cleaning of the Royal Courts of Justice:
- (c) Any other matters necessary or incidental to the use or management of the Royal Courts of Justice. Any remuneration payable under this section shall be paid out of money voted by Parliament.

Under this section the Royal Courts of Justice staff has been constituted.

**24.** The powers which, by an Act passed in the session of the sixth and seventh years of her present Majesty, intituled "An Act for consolidating and amending several of the laws relating to Attornies and Solicitors practising in England and Wales," and by section fourteen of the Supreme Court of Judicature Act, 1875, and by the Solicitors Act, 1860, and by the Solicitors Act, 1877, and by any Act amending the said Acts respectively, are vested in the Master of the Rolls jointly with the Lord Chief Justice of the Court of Queen's Bench, the Lord Chief Justice of the Court of Common Pleas, and the Lord Chief Baron of the Court of Exchequer, or with any of them, or jointly with the Presidents of the Queen's Bench, Common Pleas, and Exchequer Divisions of the High Court, or with any of them, shall henceforth be vested in the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of

**Act 1881,  
ss. 22—24.**

42 & 43 Vict.  
c. 78.

**Sect. 23.**

Appointments  
to keep order,  
&c., in Royal  
Courts of  
Justice.

**Sect. 24.**

Powers as to  
solicitors.  
6 & 7 Vict. c.  
73.  
23 & 24 Vict.  
c. 127.  
40 & 41 Vict.  
c. 62.



**Act 1881,  
ss. 24—26.**

one of them, and anything required by the said Acts to be done to or before the said Lord Chief Justices and Lord Chief Baron, or the said Presidents jointly with the Master of the Rolls, may be done to or before the Master of the Rolls, the Lord Chancellor, and the Lord Chief Justice of England.

Provision may be made by the Master of the Rolls, with the concurrence of the Lord Chancellor and the Lord Chief Justice of England, or (in case of difference) of one of them, for the care and custody of the Roll of Solicitors after the abolition of the office of Clerk of the Petty Bag.

*Renewal of Certificate.*—Where a solicitor for a whole year has neglected to renew his certificate, the Master of the Rolls only has power to order the Registrar of Certificates to grant him a certificate for the current year: *Re Chaffers*, 15 Q. B. D. 467.

**Sect. 25.**

Chief Justice of England to have powers of Chief Justice of Common Pleas and Chief Baron of the Exchequer.

**25.** Where by any Statute any power is given to or any act is required or authorised to be done by the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, either solely or jointly with the Lord Chief Justice of the Queen's Bench or the Lord Chief Justice of England, and either with or without the Lord Chancellor or any Judge, officer, or person, such power may henceforth be exercised and such act done by the Lord Chief Justice of England; and where by any Statute the concurrence of the Lord Chief Justice of the Common Pleas and the Lord Chief Baron of the Exchequer, or either of them, is required for the exercise of any power, or the performance of any act, it shall be sufficient henceforth that the Lord Chief Justice of England shall concur therein.

See ss. 12 and 32 of S. C. Jud. Act, 1873, *ante*, pp. 5, 32, and notes thereto.

**Sect. 26.**

Commissioners for acknowledgments by married women.

**26.** And whereas under the Act of the third and fourth years of King William the Fourth, chapter seventy-four, the Lord Chief Justice of the Court of Common Pleas was empowered to appoint such proper persons as he should think fit to be perpetual commissioners for taking the acknowledgments by married women of deeds to be executed by them as in the same Act provided, and such commissioners were made removable by and at the pleasure of the said Lord Chief Justice; and by divers subsequent Acts provision was made for further and other duties to be performed by such commissioners: And whereas the present Lord Chief Justice of England was before and down to the time of his appointment to that office Lord Chief Justice of the Common Pleas, and after his appointment to be Lord Chief Justice of England no other person was appointed to be Lord Chief Justice of the Common Pleas, and that office has since been abolished: Be it enacted and declared, that every appointment of any person to be a commissioner for taking such acknowledgments and performing such other duties as aforesaid, and every order for the removal of any person from such office of commissioner, which shall have been made by the present Lord Chief Justice of England at any time since his appointment to that office, or shall be hereafter made by the Lord Chief Justice of England for the time being, shall be and be deemed to have been



valid and effectual in the law, to all intents and purposes whatsoever, in the same manner as if it had been made by a Lord Chief Justice of the Common Pleas before the abolition of that office.

Act 1881,  
ss. 26, 27.

Sect. 27.

Powers to  
make rules for  
practice of  
County Courts.

27. And whereas it is expedient that the jurisdiction of County Courts should be exercised as far as conveniently may be in a manner similar to that of the High Court in the like cases, and doubts have arisen as to the extent of the powers of making rules and orders for regulating the practice of County Courts contained in the Act of the nineteenth and twentieth years of Her present Majesty, chapter one hundred and eight, which doubts it is expedient to remove: Be it enacted that the power of making rules and orders for regulating the practice of County Courts contained in section thirty-two of the said last-mentioned Act shall be deemed to extend to all matters of procedure or practice, or relating to or concerning the effect or operation in law of any procedure or practice, in any cases within the cognizance of County Courts, as to which Rules of Court have been or might lawfully be made by or under the provisions of the Judicature Acts, 1873 and 1875, and the Appellate Jurisdiction Act, 1876, for cases within the cognizance of Her Majesty's High Court of Justice; and any rules heretofore made under the provisions of the said first-mentioned Act, in the manner and with the concurrence thereby required, as to any such matters as aforesaid, shall be deemed to be and to have been to all intents and purposes valid and effectual in law.

See s. 91 of S. C. Jud. Act, 1873, *ante*, p. 61, which applies the Rules of Law enacted by that Act to all Courts in England, and s. 6 of the Statute Law Revision and Civil Procedure Act, 1883, *post*, p. 126, which authorises any of the provisions of the Judicature Act and Rules to be applied by Order in Council to any Inferior Court.

*Rules for Inferior Courts.*—As to the power to make rules for regulating appeals from Inferior Courts, see s. 23 of S. C. Jud. Act, 1884. As to the power to make rules for all Inferior Courts, see s. 24 of S. C. Jud. Act, 1884. The County Court Rules were revised and extended under this section, and came into operation on April 28, 1886.

# SUPREME COURT OF JUDICATURE ACT, 1884

(47 & 48 VICT. c. 61).

Act 1884,  
ss. 1—4.

An Act to amend the Supreme Court of Judicature Acts; and  
for other purposes. [14th August, 1884.]

WHEREAS it is expedient to make further provision concerning the Supreme Court of Judicature, and the officers thereof, and such other matters as are hereinafter mentioned:

Be it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

## Sect. 1.

Short title.

1. This Act may be cited as the Supreme Court of Judicature Act, 1884; and this Act, together with the Supreme Court of Judicature Acts, 1873 to 1879, and the Supreme Court of Judicature Act, 1881, may be cited as the Supreme Court of Judicature Acts, 1873 to 1884.

## Sect. 2.

Commencement of Act.

2. This Act shall come into operation on the twenty-fourth day of October one thousand eight hundred and eighty-four, which day is in this Act referred to as the commencement of this Act.

## Sect. 3.

Precedence of President of Probate, &c., Division.

3. The President for the time being of the Probate Divorce and Admiralty Division of the High Court of Justice shall have rank and precedence in the Court of Appeal next after all ordinary Judges of that Court appointed before the time at which he shall have become an ex-officio member thereof.

## Sect. 4.

Amendment of 39 & 40 Vict. c. 39, s. 17.

4. A Divisional Court of the Queen's Bench Division of the High Court of Justice may at any time be constituted of more than two Judges if the President of the said Division, with the concurrence of not less than two other Judges thereof, shall be of opinion that it is expedient so to constitute the same.

See s. 17 of App. Jur. Act, 1876, by which the number of Judges for a Divisional Court was limited to two.

This enactment became necessary in consequence of the union of the three Common Law Divisions into the one Queen's Bench Division. By s. 17 of App.

Jur. Act, 1876, the concurrence of a majority of the Judges of the Division was necessary before a Divisional Court of more than two Judges could be properly formed. In the absence, therefore, of the provisions of the present section, a majority of all the Judges of the Queen's Bench Division would have been requisite for the constitution of a Divisional Court of more than two Judges of that Division.

Act 1884,  
ss. 4-7.

**Sect. 5.**

5. Upon the request of the Lord Chancellor it shall be lawful for any Judge of any Division of the High Court, who may consent so to do, to sit and act for or on behalf of any other Judge of the High Court absent from illness or any other cause, or in the place of any Judge whose office has become vacant, or as an additional Judge of any Division for the purpose of hearing any causes or matters which may be assigned to him by the Lord Chancellor, or any applications therein; and while so sitting and acting any such Judge shall have all the power and authority which such other Judge would have had, or which ordinarily belong to a Judge of such Division, as the case may be. Provided that no such additional Judge shall sit and act in any Division, except with the concurrence of the respective Presidents of the Division to which such Judge belongs, and of the Division in which he may have been requested to sit and act as additional Judge; and the assignment to such Judge of any causes or matters, depending in the Division in which he shall so sit and act, shall likewise not be made except with the concurrence of the President of such last-mentioned Division.

Absence, vacancies, and insufficiency in number of Judges.

This section enables one Division to aid another Division, notwithstanding that all the Judges of the latter Division are sitting. Before this section was enacted a Judge of one Division was only able to sit *instead* of a Judge of another Division.

**Sect. 6.**

6. Any proceeding in any cause or matter assigned to any Judge of the High Court of Justice, may at any time, upon the request and on behalf of such Judge, be heard and disposed of by any other Judge of the same Division, who may be willing to hear and dispose of the same, without any transfer: Provided that, if any party to such proceeding shall object to the same being so heard and disposed of, the same shall not be so heard and disposed of without the concurrence of the Lord Chancellor, to be signified by an order in writing under his hand.

Power of one Judge to sit for another.

This section mainly affects the Chancery Division. Before this section was enacted, all the applications in a cause assigned to a particular Judge must have been taken before that Judge unless a formal order of transfer of the whole cause had been made by the Lord Chancellor.

*District Registry Case.*—Under this section, in a case commenced in the Manchester District Registry, in which appearance had been entered in London, and the action assigned to Chitty, J., Kekewich, J., requested Chitty, J., to hear all applications in Chambers: *Higgs v. Auldjo*, W. N. (1887), 255.

**Sect. 7.**

7. Judges of County Courts shall have every qualification conferred on Her Majesty's Counsel learned in the law by the Act of the thirteenth and fourteenth Victoria, chapter twenty-five.

13 & 14 Vict.  
c. 25, extended to County Court Judges.

The intention of this enactment was to enable County Court Judges to be named as Commissioners of Assize. The Act referred to in the section has been repealed, having become unnecessary: but the operation of the section is not affected by the repeal.



**Act 1884.  
ss. 8—11.****Sect. 8.**

Appeals from  
referees.  
36 & 37 Vict.  
c. 66.

8. The provisions of section forty-five of the Supreme Court of Judicature Act, 1873, as to certain appeals therein mentioned, shall extend and apply to all appeals brought after the commencement of this Act from any award or certificate of a referee or arbitrator when there has been a compulsory reference to arbitration in any cause or matter in the Queen's Bench Division of the High Court of Justice.

*Appeals in compulsory references to arbitration.*—See s. 45 of S. C. Jud. Act, 1873, *ante*, p. 38, and O. LIX., r. 3, *post*, p. 451. The result of the three enactments appears to be that in such an appeal the decision of the Divisional Court will be final unless that Court gives leave to appeal.

**Sect. 9.**

Judge may  
order trial by  
an Official  
Referee in  
certain cases.

9. In any cause or matter (other than a criminal proceeding by the Crown) now pending or hereafter commenced before the High Court of Justice or Court of Appeal, in which all parties who are under no disability consent thereto, the Court or a Judge may at any time, on such terms as may be thought proper, order the whole cause or matter to be tried before an Official Referee, who shall have power to direct in what manner the judgment of the Court shall be entered, and to exercise the same discretion as to costs as the Court or Judge could have exercised.

*Power of an Official Referee to enter judgment.*—See O. XXXVI., r. 50, *post*, p. 305; and O. XL., r. 6, *post*, p. 335.

*Moving to set aside judgment of Official Referee.*—See O. XL., r. 6, *post*, p. 335.

**Sect. 10.**

Causes which  
may be re-  
ferred to  
arbitrator may  
be referred  
to Official  
Referee.

10. In all cases in which the Court or a Judge may, under sections three, six, or twelve of the Common Law Procedure Act, 1854, direct any matter to be ascertained by a Master or referred to an arbitrator, or to an officer of the Court, or appoint an arbitrator, such Court or Judge may direct such matter to be ascertained by or referred to an Official Referee, who shall in that case perform all such duties and exercise all such powers as would have been performed or could have been exercised by such Master, arbitrator, or officer.

*Practice.*—See O. XXXVI., r. 57, *post*, p. 307 (reference of damages); O. LII., rr. 2 and 4, *post*, pp. 387, 388 (setting aside award); O. LIX., *post*, p. 451 (appeal in compulsory reference); O. LXIV., r. 14, *post*, p. 471 (time for moving to set aside award).

**Sect. 11.**

Parties under  
agreement of  
reference may  
refer to Official  
Referee.

11. Whenever the parties to any deed or instrument in writing, made or executed after the commencement of this Act, or any of them, shall agree that any existing or future difference between them, or any of them, shall be referred to an Official Referee, it shall be the duty of any one of the Official Referees to whom application shall be made for the purpose, subject to any order which may be made by the Court or a Judge for the transfer of the matter to any other Official Referee, or otherwise, to hear and determine any difference so agreed to be referred, and every such agreement shall be deemed to be an agreement to refer to arbitration within the meaning of sections eleven and seventeen of the Common Law Procedure Act, 1854.

See note to last preceding section. As to filing submissions to arbitration see O. LXI., r. 31, *post*, p. 460.

12. Nothing in this Act shall interfere with any existing provisions as to any proceedings before district registrars.

Act 1884,  
ss. 12—15.

As to proceedings in District Registries, see O. XXXV., *post*, p. 278.

This section seems to refer to the three immediately preceding sections, and to be intended to remove any doubt which might arise as to their effect on proceedings in District Registries.

Sect. 12.  
Saving as to district registrars.

13. The provisions of section sixteen of the Act eighteen and nineteen Victoria, chapter one hundred and thirty-four, shall extend to all applications under any Act of Parliament heretofore passed, or hereafter to be passed, under or by virtue of which the High Court of Justice, or any Judge thereof, is empowered to make orders in respect of trust funds, or any other matters, upon petition presented, or motion made, in a summary way.

Sect. 13.  
Summary applications under statutes 18 & 19 Vict. c. 134, s. 16.

The provisions of s. 16 of 18 & 19 Vict. c. 134, are as follows:—

“And whereas by divers Acts of Parliament the Court of Chancery is empowered to make orders in respect of the disposition of trust funds, and other matters under its jurisdiction, upon petition presented or motion made in a summary way, without bill, but such orders cannot be made in respect of the same matters upon application at Chambers; Be it therefore enacted, that the business to be disposed of by the Master of the Rolls and the Vice-Chancellors respectively, while sitting at Chambers, shall comprise such of the matters in respect of which the Court of Chancery is so as aforesaid empowered to make orders in a summary way as the Lord Chancellor, with the advice and assistance of the Master of the Rolls and the Vice-Chancellors, or any two of them, may by any general order direct.”

Business which Court is not empowered to dispose of in a summary way may be disposed of at Chambers.

This section includes all matters under Acts of Parliament subsequent to the 18 & 19 Vict. c. 134; so that Rules of Court can be made for the transaction in Chambers of any matters under such subsequent statutes, as well as the matters specified in O. LV., *post*, p. 400. See *Re Gill*, 53 L. T. 623.

See O. LV., r. 2, *post*, p. 400, which prescribes what applications are to be made at Chambers in the Chancery Division.

14. Where any person neglects or refuses to comply with a judgment or order directing him to execute any conveyance, contract, or other document, or to indorse any negotiable instrument, the Court may, on such terms and conditions (if any) as may be just, order that such conveyance, contract, or other document shall be executed, or that such negotiable instrument shall be indorsed by such person as the Court may nominate for that purpose; and in such case the conveyance, contract, document, or instrument so executed or indorsed shall operate and be for all purposes available as if it had been executed or indorsed by the person originally directed to execute or indorse it.

Sect. 14.  
Execution of instruments by order of the Court.

See O. XLI., r. 5, *post*, p. 337, and notes thereto.

*Execution of Mortgage.*—An order was made for execution by the Chief Clerk of a mortgage deed which a defendant refused to execute: *Re Edwards*, 33 W. R. 578.

*Probate Cases.*—The jurisdiction given by this section may be exercised in probate cases: *Howarth v. Howarth*, 11 P. D. 95.

15. Proceedings in *quo warranto* shall be deemed to be civil proceedings whether for purposes of appeal or otherwise.

Sect. 15.  
*Quo warranto.*

*Quo warranto.*—See O. LXVIII., r. 2, and notes thereto, *post*, p. 509, and Crown Office Rules, 1886, rr. 51—59.



Act 1884,  
ss. 16—18.

Sect. 16.  
Amendment  
of 17 & 18 Vict.  
c. 34, s. 1.

16. Section one of the Act seventeen and eighteen Victoria, chapter thirty-four, entitled "An Act to enable Courts of Law in England, Ireland, and Scotland to issue process to compel the attendance of witnesses out of their jurisdiction, and to give effect to the service of such process in any part of the United Kingdom," is hereby amended so as to authorise and empower a Judge of the High Court to make orders as therein mentioned, as well when the Court is sitting as at any other time.

The section referred to is as follows:—

"If in an action or suit now or at any time hereafter depending in any of Her Majesty's Superior Courts of Common Law at Westminster, or Dublin, or the Court of Session or Exchequer in Scotland, it shall appear to the Court in which such action is pending, or if such Court is not sitting, to any Judge of any of the said Courts respectively, that it is proper to compel the personal attendance at any trial of any witness who may not be within the jurisdiction of the Court in which such action is pending, it shall be lawful for such Court or Judge, if in his or their discretion it shall so seem fit, to order that a writ called a writ of *subpœna ad testificandum* or of *subpœna duces tecum*, or warrant of citation shall issue in special form, commanding such witness to attend such trial wherever he shall be within the United Kingdom, and the service of any such writ or process in any part of the United Kingdom shall be as valid and effectual to all intents and purposes as if the same had been served within the jurisdiction of the Court from which it issues."

The present section enables the jurisdiction given by 17 & 18 Vict. c. 34, s. 1, to be exercised by a Judge in Chambers at any time.

*Subpœnas.*—See O. XXXVII., rr. 26 *et seq.*, *post*, p. 315.

#### Sect. 17.

Power to  
transfer inter-  
pleader pro-  
ceedings to  
County Court.

28 & 29 Vict.  
c. 99.

17. If it shall appear to the Court or a Judge that any proceeding now pending or hereafter commenced in the High Court of Justice by way of interpleader, in which the amount or value of the matter in dispute does not exceed the sum of five hundred pounds (being the limit of the equitable jurisdiction given to County Courts by the County Courts Act, 1865), may be more conveniently tried and determined in a County Court, the Court or Judge may at any time order the transfer thereof to any County Court, in which an action or proceeding might have been brought by any one or more of the parties to such interpleader against the others or other of them, if there had been a trust to be executed concerning the matter in question; and every such order shall have the same effect as if it had been for the transfer of a suit or proceeding under section eight of the County Courts Act, 1867; and the County Court shall have jurisdiction and authority to proceed therein, as may be prescribed by any County Court Rules for the time being in force.

County Court Rules for the purpose of regulating proceedings under this section came into operation on April 28th, 1886.

As to interpleaders in the High Court generally, see O. LVII., and notes thereto, *post*, p. 429.

The result of this enactment is that in a transferred interpleader there is an appeal to the High Court without leave.

#### Sect. 18.

Jurisdiction  
of Inferior  
Courts in  
counterclaims.  
36 & 37 Vict.  
c. 66.

18. The jurisdiction of an inferior Court in cases of counterclaim under sections eighty-nine and ninety of the Supreme Court of Judicature Act, 1873, shall not be excluded by reason (1) that any such counterclaim involves matter not within the local jurisdiction of such inferior Court, but within the jurisdiction of any other inferior Court in England; or (2) that, where the counterclaim involves more than one cause of action, as to each of which the de-



defendant might have maintained a separate action, each such cause of action being within the jurisdiction of the Court, the aggregate amount of the counterclaim exceeds the jurisdiction of the Court; or (3) that the counterclaim is for an amount of money exceeding the jurisdiction of the Court, provided that the plaintiff does not object in writing, within such time as may be prescribed by any rules, to the Court giving relief exceeding that which the Court would have had jurisdiction to administer prior to the commencement of this Act. In any case where the counterclaim involves matter beyond the jurisdiction of the Court, notwithstanding the provisions of this section, the Court may, on such terms (if any) as the Court may think just, either adjourn the hearing of the case, or stay execution on the judgment, for such time as may be necessary to enable any party to apply to remove the proceedings into the High Court of Justice or to enable the defendant to prosecute in a Court of competent jurisdiction an action for the purpose of establishing his counterclaim; and in default of any such application being made, or action brought, the Court shall, after the expiration of the time limited, have jurisdiction to hear and determine the whole matter in controversy, to the same extent as if all parties had consented thereto.

*Time for objecting.*—The time for giving the notice required by this section for objecting to the County Court exercising jurisdiction in a counterclaim has been fixed at *two days* from the receipt of the notice of the counterclaim. See O. X., r. 3, of the County Court Rules, 1886.

See ss. 89 and 90 of S. C. Jud. Act, 1873, and notes thereto, *ante*, p. 60.

**19.** The power and right of filling any vacancy in the office of Master of the Supreme Court, or in any clerkship in the central office, by section nine of the Supreme Court of Judicature (Officers) Act, 1879, vested, subject as therein mentioned, in the Lord Chief Justice of England, the Master of the Rolls, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, in rotation and in such order as they by agreement among themselves might determine, shall after the commencement of this Act be vested, subject as in the same Act mentioned, in the Lord Chancellor, the Lord Chief Justice of England, and the Master of the Rolls, in rotation or in such order or manner as they by agreement among themselves may determine.

See s. 9 of S. C. Jud. Act, 1879, *ante*, p. 97.

**20.** The provisions of section twenty of "The Supreme Court of Judicature (Officers) Act, 1879," with respect to pensions under that Act, shall, as regards appointments made after the commencement of this Act, extend to salaries under that Act.

The effect of this enactment is, that no clerk appointed to any office in the Supreme Court can obtain his salary unless and until he has passed the Civil Service examination applicable to his class. The subjects of examination and conditions of appointment as to age and so forth are published by the Civil Service Commission.

**21.** The power of appointment to such offices connected with the circuits of the Judges under Commissions of Assize, Oyer and Terminer, and Gaol Delivery, or otherwise, as, before the Supreme

Act 1884,  
ss. 18—21.

**Sect. 19.**

Patronage  
under 42 & 43  
Vict. c. 78.

**Sect. 20.**

Civil Service  
certificates for  
officers of Su-  
preme Court.  
42 & 43 Vict.  
c. 78.

**Sect. 21.**

Circuit officers.  
36 & 37 Vict.  
c. 66.

**Act 1884,  
ss. 21—23.**

Court of Judicature Act, 1873, came into operation, were in the appointment of the senior Judge going on any circuit, and also the power of appointment to all subordinate offices, the salaries of which are paid out of moneys provided by Parliament, and which may be held under any such circuit officers as aforesaid who may be appointed after the commencement of this Act, shall henceforth be vested in the senior Judge going on such circuit for the winter and summer assizes respectively: Provided that the power of appointment to any such subordinate offices, which before the Supreme Court of Judicature Act, 1873, came into operation, were in the appointment of any such circuit officer as aforesaid, shall be deemed to be and be in the appointment of the person holding such circuit office at the time of the commencement of this Act, so long as he shall continue to hold the same office: Provided also, that all such offices, whether principal or subordinate, as are in this section mentioned, shall be and remain subject to the provisions in the Supreme Court of Judicature Act, 1873, or any other Act contained, as to the abolition, reduction of salary, or alteration of the designation or duties of any such office, and to the provisions of section twenty-one of the Supreme Court of Judicature Act, 1881, in case of any vacancy in any such office; and that nothing in this Act shall take away or affect any power of appointment now vested by law in any Judge appointed before the Supreme Court of Judicature Act, 1873, came into operation.

44 & 45 Vict.  
c. 68.

The effect of this section is, that the patronage of Judges with respect to circuit appointments is confined to the two principal circuits, and is not exercisable by the Judges who travel the autumn and spring circuits. It also transfers, subject to existing rights to the Judges the patronage hitherto exercised by the clerks of assize.

**Sect. 22.**

Abolition of  
offices of sworn  
clerks to ex-  
aminers in  
Chancery.

**22.** The offices of the sworn clerks formerly attached to the office of the Chancery Examiners (which has ceased to exist) are hereby abolished, and the Treasury may, on the petition of any person affected by this section, award to him out of moneys provided by Parliament such compensation as, under the circumstances of the case, they think just and reasonable, regard being had to the conditions on which he was appointed to his office and the duration of his service: Provided that any compensation so granted shall be subject to the provisions of the twentieth section of the Act fourth and fifth William the Fourth, chapter twenty-four, and of the eleventh section of the Act twenty-second Victoria, chapter twenty-six.

This enactment was passed after the substitution of the Examiners of the Court for the old office of Chancery Examiner.

See O. XXXVII., as to the Examiners of the High Court, and their appointment.

**Sect. 23.**

Power to make  
rules.

**23.** The power to make rules conferred by section seventeen of the Supreme Court of Judicature Act, 1875, and enactments amending the same shall be deemed to include the power to make rules for regulating the procedure on appeals from inferior Courts to the High Court.

See s. 45 of S. C. Jud. Act, 1873, and notes thereto, *ante*, p. 38, and O. LIX., *post*, p. 451.



**24.** Where by virtue of any statute or charter, or otherwise, powers of making rules and orders for regulating the procedure or practice of or the costs or fees in any inferior Court of civil jurisdiction are given to or have been exercised by the Judge of any such Court or any other person, either solely or jointly with any other person, and either with or without the concurrence of any Judge of Her Majesty's Supreme Court of Judicature or any other person, any rules or orders made after the commencement of this Act by virtue of any such powers as aforesaid shall be subject to the concurrence of the authority for the time being empowered to make rules for the Supreme Court: Provided that the same authority may alter or annul any existing rule or order as to the matters aforesaid in any such Court, if, after communication with the Judge or other person by whom such rule or order was made it shall think fit to do so, subject, where such rule has been made with the concurrence of any Judge of the Supreme Court existing at the commencement of this Act, to the consent of such Judge.

Act 1884,  
s. 24.

Sect. 24.  
Rules for In-  
ferior Courts.

*Effect of section.*—The effect of this section is to give to the Rule Committee of the Judges jurisdiction to make rules for all Inferior Courts. A review of the powers of Inferior Courts to make rules of procedure will be found in a judgment delivered in March, 1885, by Wills, J., in *Speers v. Daggers*, 1 Cab. & Ell. 503.

*County Court Rules, 1886.*—Since this section became law the County Court Rules, 1886, have been made under its provisions.

*Inferior Courts.*—The principal Inferior Courts other than County Courts are certain Courts of Record attached to cities and boroughs, which have power by ancient charters to exercise jurisdiction in certain suits. Of these the chief are:—

The Mayor's Court of London,  
The Liverpool Court of Passage,  
The Salford Hundred Court of Record,  
The Oxford University Chancellor's Court.

The Mayor's Court of London has a special Act, 21 & 22 Vict. c. lvii.

The Liverpool Court of Passage has several special Acts.

The Salford Hundred Court of Record has a special Act, 31 & 32 Vict. c. cxxx.

The Oxford University Chancellor's Court has a special Act, 25 & 26 Vict. c. xxvi.

Other Inferior Courts of Record which have no special Acts governing their procedure are, the

Bristol Tolzey and Pie Poudre Court,  
Derby Court of Record,  
Exeter Provost Court,  
Kingston-upon-Hull Court,  
Newark Court of Record,  
Northampton Borough Court,  
Norwich Guildhall Court,  
Peterborough Court of Common Pleas,  
Preston Court of Pleas,  
Romsey Court of Pleas,  
Southwark Court of Record.

*Acts giving power to make rules for Inferior Courts.*—The principal statutory enactments which give power to make rules regulating the procedure and practice of Inferior Courts are the following:—

The 228th section of the C. P. Act, 1852, the 105th section of the C. P. Act, 1854, and the 44th section of the C. P. Act, 1860, which gave power to the Queen in Council to direct that all or any of the provisions of the Common Law Procedure Acts, or of the rules under those Acts, should apply to any Court of Record.



**Act 1884,  
s. 24.**

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The Municipal Corporations Acts of 1835 and 1836 (5 & 6 Will. IV. c. 76, s. 118, and 6 & 7 Will. IV. c. 105, s. 9); the Act of 1839 for regulating proceedings in borough Courts (2 & 3 Vict. c. 27, s. 1), and the Municipal Corporations Act, 1882, s. 182, contain provisions enabling Judges of borough Courts of Record to make rules for regulating the practice and procedure of these Courts, subject to the rules being confirmed by three Judges of the Superior Courts.

The Borough and Local Courts of Record Act, 1872, gave power to the Queen in Council to apply the enactments as to interpleader to any of the local Courts of Record; and also contained other provisions regulating the practice in such Courts.

By the Statute Law Revision, &c. Act, 1883, *post*, p. 127, power is given to the Queen, by Order in Council, to extend to any Inferior Civil Court any of the provisions of the Judicature Acts, or of the rules made under those Acts, with any such modifications as may be necessary or desirable in the same manner as and to the like extent that the provisions of the C. P. Acts, and of the general rules made thereunder, might, under the powers given by those Acts, have been extended to any such Court.

The above-mentioned statutory powers are now subject to the present section, by which the control over all rules of procedure in Inferior Courts is given to the Rule Committee of Judges.

# APPELLATE JURISDICTION ACT, 1887.

(50 & 51 VICT. c. 70.)

An Act to amend the Appellate Jurisdiction Act, 1876.

Act 1887,  
ss. 1—3.

[16th September, 1887.]

WHEREAS it is expedient to amend the Appellate Jurisdiction Act, 1876: 39 & 40 Vict.  
c. 59.

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:

1. Whereas it is expedient that any lord of appeal, as defined by the Appellate Jurisdiction Act, 1876, notwithstanding that he may not be a lord of appeal in ordinary within the meaning of that Act, should be empowered to take his seat and the oaths at the sittings of the House of Lords for hearing and determining appeals during the prorogation of Parliament: be it enacted that, notwithstanding anything in the eighth section of the said Act contained, every lord of appeal shall be empowered to take his seat and the oaths at any such sitting of the House of Lords during prorogation.

Lord of Appeal may take his seat during prorogation.

2. The sixth section of the Appellate Jurisdiction Act, 1876, shall be construed and take effect, as well in respect of any lord of appeal in ordinary heretofore appointed under that Act, as of any such lord hereafter appointed, so as to entitle any person so appointed to sit and vote as a member of the House of Lords during his life as fully as if the words "during the time that he continues in his office as a lord of appeal in ordinary, and no longer" had been omitted from the said section.

Retired Lord of Appeal in Ordinary may sit in House of Lords.

3. The Judicial Committee of the Privy Council as formed under the provisions of the first section of the Act of the third and fourth William the Fourth, chapter forty-one, intituled "An Act for the better administration of Justice in His Majesty's Privy Council," shall include such members of Her Majesty's Privy Council as are for the time being holding or have held any of the offices in the Appellate Jurisdiction Act, 1876, and this Act, described as high judicial offices.

Amendment of 3 & 4 Will. 4, c. 41.

**Act 1887,  
ss. 4—6.**

Remuneration  
in Judicial  
Committee.

**4.** Any person who shall in virtue of the thirtieth section of the Act of the third and fourth William the Fourth, chapter forty-one, attend the sittings of the Judicial Committee of the Privy Council, shall be deemed to be included as a member of the said Committee for all purposes, and shall, if there be only one such person, be entitled to receive the whole amount of the sums by the said section provided, that is to say, eight hundred pounds for every year during which he shall so attend; but if there shall at any time be two such persons, they shall severally be entitled to the sums provided in the said section.

Amendment of  
39 & 40 Vict.  
c. 59, s. 25.

**5.** The expression "high judicial office" as defined in the twenty-fifth section of the Appellate Jurisdiction Act, 1876, shall be deemed to include the office of a lord of appeal in ordinary and the office of a member of the Judicial Committee of the Privy Council.

Short title.

**6.** This Act may be cited as the Appellate Jurisdiction Act, 1887.



# STATUTE LAW REVISION AND CIVIL PROCEDURE ACT, 1883

(46 & 47 VICT. c. 49).

An Act for promoting the Revision of the Statute Law by repealing various Enactments relating to Civil Procedure or matters connected therewith, and for amending in some respects the Law relating to Civil Procedure.

Act 1883,  
ss. 1, 2.

[25th August, 1883.]

WHEREAS with a view to the revision of the Statute Law it is expedient that various enactments (mentioned in the schedule to this Act) which chiefly relate to civil procedure, or matters connected therewith, and which may be regarded as spent, or have ceased to be in force otherwise than by express and specific repeal by Parliament, or have by lapse of time and change of circumstances become unnecessary, or the subject-matter whereof is provided for by or under the Supreme Court of Judicature Act, 1873, and the Acts amending it, or rules made pursuant thereto, or for other reasons, may properly be repealed, be now expressly and specifically repealed:

36 & 37 Vict.  
c. 66.

And whereas it is expedient that in some respects the law relating to civil procedure be amended:

Be it therefore enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

1. This Act may be cited as the Statute Law Revision and Civil Procedure Act, 1883. Short title.

2. This Act shall not extend to Scotland or Ireland. It shall come into operation on the twenty-fourth day of October one thousand eight hundred and eighty-three. Extent and  
commence-  
ment.

**Act 1883,  
ss. 3—6.**

Repeal of  
enactments  
scheduled.

Repeal of  
enactments  
scheduled in  
42 & 43 Vict.  
c. 59.

Savings.

3. The enactments described in the schedule to this Act are hereby repealed, subject to the exceptions and qualifications mentioned in this Act and in that schedule.

4. The enactments mentioned in Part II. of the schedule to the Civil Procedure Acts Repeal Act, 1879, are hereby repealed.

5. The repeal effected by this Act shall not affect—

- (a.) Anything done or suffered before the passing of this Act under any enactment repealed by this Act; or
- (b.) Any jurisdiction or principle or rule of law or equity established or confirmed, or right or privilege acquired, or duty or liability imposed or incurred, or compensation secured by or under any enactment repealed by this Act; or

As to this sub-section, see *Re Busfield*, 32 Ch. D. 123, at p. 132, per Cotton, L.J.; *Winfield v. Boothroyd*, 54 L. T. 574, at p. 577, per Wills, J. See, too, *Snelling v. Pulling*, 29 Ch. D. 85; *Serrao v. Noel*, 15 Q. B. D. 509.

- (c.) Any right to any hereditary revenues of the Crown or any charges thereon; or
- (d.) The repeal, confirmation, revival, or perpetuation by any enactment repealed by this Act of any enactment not repealed by this Act; or
- (e.) The application or incorporation of any enactment repealed by this Act by or under any enactment not repealed by this Act, or by or under any Order in Council, so long as such Order remains in force.

*Lord Cairns' Act.*—Although Lord Cairns' Act (21 & 22 Vict. c. 27) is repealed by this Act, the jurisdiction conferred thereby is still in force: *Sayers v. Collyer*, 28 Ch. D. 103; and see *Holland v. Worley*, 26 Ch. D. 578.

Abolished  
procedure  
not revived.

6. (a.) This Act shall not be deemed to revive or restore any jurisdiction, office, duty, drawback, fee, payment, franchise, liberty, custom, right, title, privilege, restriction, exemption, usage, practice, procedure, or other matter or thing not existing or in force at the passing of this Act.

(b.) No enactment repealed by virtue of section thirty-three of the Supreme Court of Judicature Act, 1875, shall be revived by reason of the annulment or alteration by any new Rules of Court of the rules contained in the First Schedule to that Act.

38 & 39 Vict.  
c. 77.

Section 33 of S. C. Jud. Act, 1875, repealed all enactments inconsistent with that Act, and it therefore repealed all enactments inconsistent with the Rules contained in the First Schedule. That schedule, among other matters, abolished local venues, bills of exceptions, proceedings in error, &c. By virtue of the present enactment these proceedings remain abolished, although the rules abolishing them are not reproduced by the Rules of 1883.

(c.) The enactments relating to the making of Rules of Court, contained in the Supreme Court of Judicature Act, 1875, and the Acts amending it, shall be deemed to extend and apply to the matters contained in and regulated by the enactments repealed by this Act.

Many of the Rules of 1883 reproduce the substance of statutory enactments repealed by this Act. It was thought that where the statutory foundation of

a rule was taken away, doubts might arise as to whether the rules might not be *ultra vires*. This enactment removes any such doubt, and validates all such rules. For examples see O. XXV., r. 5, *post*, p. 234, as to declaratory judgments, and O. XXXVI., r. 36, *post*, p. 300, as to the right of addressing jury, and O. XXXVI., r. 58, *post*, p. 307, as to assessment of damages for continuing wrong.

Act 1883,  
ss. 6—8.

7. If and in so far as any enactment repealed by this Act, or by the Civil Procedure Acts Repeal Act, 1879, applies, or may have been by Order in Council applied, to the Court of the County Palatine of Lancaster, or to any inferior Court of civil jurisdiction, such enactment shall be construed as if it were contained in a Local and Personal Act specially relating to such Court, and shall have effect accordingly.

Application  
of repealed  
enactments  
in local Courts.

8. It shall be lawful for the Queen from time to time, by Order in Council, to extend to any inferior Court of civil jurisdiction any of the provisions of the Supreme Court of Judicature Act, 1873, and Acts amending it, or of the Rules of Court made thereunder, with any such modifications as may be necessary or desirable, in the same manner as and to the like extent that the provisions of the Common Law Procedure Acts, 1852, 1854, and 1860, and of the general rules made thereunder, might, under the powers given by those Acts, have been extended to any such Court.

Power to apply  
certain provi-  
sions of Judi-  
cature Acts  
and Rules to  
Inferior  
Courts.

See ss. 89—91 of S. C. Jud. Act, 1873, *ante*, pp. 60, 61, and notes thereto.

## SCHEDULE.

## Schedule.

### ENACTMENTS REPEALED.

This schedule is to be read as referring to the Revised Edition of the Statutes prepared under the direction of the Statute Law Committee in all cases of statutes included in that edition.

The chapters of the statutes are described by the marginal abstracts given in that edition.

A description or citation of a portion of an Act is inclusive of the words, section, or other part first or last mentioned, or otherwise referred to as forming the beginning or forming the end of the portion comprised in the description or citation.

11 Hen. 7, c. 12 ....	An Acte to admytt such psons as are poore to sue in forma pauperis.
23 Hen. 8, c. 15 ....	An Acte that the defendant shall recover costs against the pleyntif if the pleyntiff be nonsuited, or if the verdict passe against him.
9 Anne, c. 25, in part.	An Act the title whereof begins with the words "An Act for rendering," and ends with the words "in corporations and boroughs." In part; namely,—section one from the words "For remedy whereof" down to the end of the section. Section two, section three, and section six.
1 Will. 4, c. 21 ....	An Act to improve the proceedings in prohibition and on writs of mandamus.



**Schedule.**

1 Will. 4, c. 22, in part.	An Act to enable Courts of law to order the examination of witnesses upon interrogatories and otherwise. In part; namely,—section three, section four, section five, section eight, section nine, section ten, section eleven.
1 & 2 Will. 4, c. 58 .	An Act to enable Courts of law to give relief against adverse claims made upon persons having no interest in the subject of such claims.
5 & 6 Vict. c. 69 ....	An Act for perpetuating testimony in certain cases.
6 & 7 Vict. c. 67 ....	An Act to enable parties to sue out and prosecute writs of error in certain cases upon the proceedings on writs of mandamus.
13 & 14 Vict. c. 35 ..	An Act to diminish the delay and expense of proceedings in the High Court of Chancery in England.
15 & 16 Vict. c. 76, in part.	The Common Law Procedure Act, 1852. In part; namely,—the whole Act except sect. 23; sects. 104 to 108; sect. 110; sects. 112 to 115; sect. 126; sect. 127; sect. 132; sects. 208 to 220; sect. 226; sect. 235; and sect. 236.
15 & 16 Vict. c. 80, in part.	An Act to abolish the office of Master in Ordinary of the High Court of Chancery, and to make provision for the more speedy and efficient despatch of business in the said Court. In part; namely,—sects. 11 to 15, 26 to 34, 36, 40, 42, 43, 53, 56.
15 & 16 Vict. c. 86, in part.	An Act to amend the Practice and Course of Proceeding in the High Court of Chancery. In part; namely,—sects. 3 to 21, sects. 25 to 42, sects. 44 to 47, sects. 49 to 62, sect. 66, and the schedule.
17 & 18 Vict. c. 125, in part.	The Common Law Procedure Act, 1854. In part; that is to say, the whole Act except sects. 3 to 17, sects. 20 to 30, sect. 59, sect. 87, sect. 89, sects. 103, 106, and 107.
18 & 19 Vict. c. 67 ..	The Summary Procedure on Bills of Exchange Act, 1855.
21 & 22 Vict. c. 27 ..	The Chancery Amendment Act, 1858.
23 & 24 Vict. c. 38, in part.	An Act to further amend the law of property. In part; namely,—sect. 14.
23 & 24 Vict. c. 126, in part.	The Common Law Procedure Act, 1860. The whole Act, except sect. 1, sect. 17, sect. 22, sects. 45 and 46.
25 & 26 Vict. c. 42 ..	The Chancery Regulation Act, 1862.
30 & 31 Vict. c. 64 ..	An Act to make further provision for the despatch of business in the Court of Appeal in Chancery.

## RULES OF THE SUPREME COURT, 1883.

[NOTE.—The editors have retained the marginal references to the bodies of Rules which were repealed by the Rules of 1883. As was done in previous Editions where an old rule is reproduced without alteration, a reference to its former Order and number is given in brackets in the margin, and where an old rule is reproduced with modifications, the marginal reference to it is preceded by the prefix Cf. Throughout the Rules words importing time are printed in italics.]

### RULES OF COURT.\*

THE following Orders and Rules may be cited as “THE RULES OF THE SUPREME COURT, 1883,” they shall come into operation on the twenty-fourth day of October, 1883, and shall also apply, so far as may be practicable (unless otherwise expressly provided), to all proceedings taken on or after that day in all causes and matters then pending.

Commence-  
ment.

Pending  
proceedings.

The Orders and Rules mentioned in Appendix O. hereto are hereby annulled, and the following Orders and Rules shall stand in lieu thereof.

For App. O., see *post*, p. 660.

*Proceedings pending on 24th Oct. 1883.*—See *Bell v. Kilmorey*, W. N. (1883), 207 (leave given before new rules to serve writ out of jurisdiction); *E. v. F.*, *ibid.* (interrogatories); *Re Llewellyn*, 25 Ch. D. 66 (administration, O. LV., r. 10); *Re McClellan*, 29 Ch. D. 495 (discretion as to costs in proceedings for administration, O. LXV., r. 1); *Edgington v. Fitzmaurice*, 32 W. R. 848 (costs on higher scale, O. LXV., rr. 8, 9); *Boswell v. Coates*, 36 W. R. 65 (taxation of costs upon judgment dated prior to 24th October, 1883); *Brown v. Burdett*, 37 Ch. D. 207; *Re Ormston*, W. N. (1888) 152 (costs improperly incurred, O. LXV., r. 11).

\* Authority under which the Rules are made.—See S. C. Jud. Act, 1875, s. 17 (*ante*, p. 74); App. Jur. Act, 1876, s. 17 (*ante*, p. 89); S. C. Jud. (Officers) Act, 1879, s. 22 (*ante*, p. 100); S. C. Jud. Act, 1881, s. 19 (*ante*, p. 109); S. C. Jud. Act, 1884, s. 23 (*ante*, p. 120). The present body of rules supersedes the rules which formed the First Schedule to S. C. Jud. Act, 1875; and all the rules subsequently made. By s. 6 of the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49). “The enactments relating to the making of Rules of Court, contained in the Supreme Court of Judicature Act, 1875, and the Acts amending it, shall be deemed to extend and apply to the matters contained in and regulated by the enactments repealed by this Act.” See *ante*, p. 126. As regards matters not covered by the new rules, the old practice and procedure remain in force, see s. 21 of S. C. Jud. Act, 1875, *ante*, p. 76, and O. LXXII., r. 2, *post*, p. 515.

## Order I. r. 1.

## ORDER I.

## FORM AND COMMENCEMENT OF ACTION.

1.  
Action.  
[Cf. O. I.,  
r. 1.]

1. All actions which, previously to the commencement of the Principal Act, were commenced by writ in the Superior Courts of Common Law at Westminster, or in the Court of Common Pleas at Lancaster, or in the Court of Pleas at Durham, and all suits which, previously to the commencement of the Principal Act, were commenced by bill or information in the High Court of Chancery, or by a cause *in rem* or *in personam* in the High Court of Admiralty, or by citation or otherwise in the Court of Probate, shall be instituted in the High Court of Justice by a proceeding to be called an action.

*Definition of term action.*—"Action" means a civil proceeding commenced by writ, or in such other manner as may be prescribed by Rules of Court; and does not include a criminal proceeding by the Crown: S. C. Jud. Act, 1873, s. 100.

*What proceedings within the term.*—The proceedings which, under this rule, are to be instituted by action are Common Law actions, suits in Chancery formerly commenced by bill or information, and Admiralty and Probate suits. Proceedings in any of the Courts consolidated by the Acts which have hitherto been instituted in any other mode, as, for instance, Chancery proceedings commenced by petition, are unaffected by this rule: though others of the rules affect them. By O. LXVIII., *post*, p. 509, subject to the exceptions contained in that order, nothing in the rules is to affect the practice or procedure in criminal proceedings, proceedings on the Crown side or Revenue side of the Queen's Bench Division, or proceedings for Divorce or other Matrimonial Causes.

*Originating Summons.*—An originating summons is an "action" within the meaning of S. C. Jud. Act, 1873, s. 100: *Re Fawsitt*, 30 Ch. D. 231. It is, therefore, not "a matter not being an action" within O. LVIII., r. 15 (*post*, p. 444); so that an order made on such a summons is appealable at any time within one year from the date: *Re Fawsitt*; *Re Vardon's Trusts*, 55 L. J. Ch. 259.

*Information.*—The title "information" ought no longer to be used: per Jessel, M. R., *A.-G. v. Shrewsbury Bridge Co.*, 42 L. T. 79. The signature of the Attorney-General is required when there is a relator, but not otherwise: Practice Rules, *post*, p. 697. For regulations by the Attorney-General as to proceedings in his name, see Dan. Forms, pp. 28, 29; and for description of the Attorney-General in a writ of summons, *Ibid.* p. 103. As to written authority of relator to use his name, see O. XVI., r. 20, *post*, p. 183.

*Subject-matter of trifling amount.*—See as to cases within the County Courts Act, 1867, S. C. Jud. Act, 1873, s. 67, *ante*, pp. 50—53. Formerly, the Court of Chancery would not entertain a suit, the subject-matter of which was under 10*l.*, unless it were instituted to establish a general right (C. O. IX., r. 1). Though the order providing for this is repealed, it seems that the same principle still applies in the Chancery Division. Thus, in a case which before the Jud. Act could not have been commenced at law, and would not have been entertained in Chancery as offending against the above rule, the C. A. held that the action would not lie. The effect of the Jud. Acts has not been to enlarge the jurisdiction: *Westbury Rur. San. Authority v. Meredith*, 30 Ch. D. 387.

*Notice of action.*—When required by statute: see *Flower v. Local Board of Lou Leyton*, 5 Ch. D. 347, where it was held that the provisions of s. 264 of the Public Health Act, 1875, which require a month's notice of action to be given to local boards of health, do not apply to actions where the principal relief sought is an injunction, and damages are only claimed as subsidiary thereto. In so far as notice of action is prescribed by Acts prior to 1842 the length of notice to be given is regulated by 5 & 6 Vict. c. 97, s. 4, which fixes the period at one month.



2. All other proceedings in and applications to the High Court may, subject to these Rules, be taken and made in the same manner as they would have been taken and made in any Court in which any proceeding or application of the like kind could have been taken or made if the Acts had not been passed.

"The Acts" referred to in this rule are the Judicature Acts, 1873—1884, and the Appellate Jurisdiction Act, 1876.

*Other Proceedings.*—See, as to special case, O. XXXIV., *post*, p. 274; motion, O. LII., *post*, p. 386; petition, O. LII., rr. 16, 17, *post*, p. 391; summons, O. LIV., *post*, p. 394; originating summons, O. LV., r. 20, *post*, p. 411; mandamus, O. LIII., *post*, p. 393; interpleader, O. LVII., *post*, p. 429; proceedings on Crown side, &c., O. LXVIII., *post*, p. 509.

As to terms, when used as a measure of time for proceedings, see S. C. Jud. Act, 1873, s. 26, *ante*, p. 29, and note thereto. As to appearance under protest in Admiralty actions, see *The Vivar*, 2 P. D. 29.

*Saving of procedure.*—Existing procedure, where not inconsistent with the Acts or Rules, is expressly saved by S. C. Jud. Act, 1875, s. 21, *ante*, p. 76, and O. LXXII., r. 2, *post*, p. 515.

*Variance.*—Where there was a variance between the Common Law and Equity practice, and the new Rules are silent on the point, the practice which appears most convenient will now be adopted: see *Newbiggin-by-the-Sea Gas Co. v. Armstrong*, 13 Ch. D. 310; *Nurse v. Durnford*, 13 Ch. D. 764; *Bustros v. Bustros*, 14 Ch. D. 849; *Fowler v. Barstow*, 20 Ch. D. 240; *Thomas v. Palin*, 21 Ch. D. 360, at p. 367; *La Grange v. McAndrew*, 4 Q. B. D. 211.

## ORDER II.

### WRIT OF SUMMONS AND PROCEDURE, &c.

1. Every action in the High Court shall be commenced by a writ of summons, which shall be indorsed with a statement of the nature of the claim made, or of the relief or remedy required in the action, and which shall specify the Division of the High Court to which it is intended that the action should be assigned.

*Indorsement of claim.*—See O. III., *post*, p. 131.

*Claim for mandamus, injunction, or receiver.*—It would seem that in such case the plaintiff should indorse his writ with a claim for the particular relief sought, but that it is not absolutely essential that he should do so: see S. C. Jud. Act, 1873, s. 25, sub-s. 8, *ante*, p. 23, O. L., r. 6, *post*, p. 374; *Colebourne v. Colebourne*, 1 Ch. D. 690.

*Amendment of indorsement.*—See O. XXVIII., r. 1, *post*, p. 242.

*Assignment of action to particular Division or Judge.*—See, as to actions in the Chancery Division, S. C. Jud. Act, 1873, ss. 33, 42, *ante*, pp. 33, 38. As to the mode of assignment, see O. V., r. 9, *post*, p. 138.

As to notice to the proper officer of the choice of Division, see S. C. Jud. Act, 1875, s. 11, *ante*, p. 72; O. V., r. 5, *post*, p. 137.

*Writ issued from District Registry.*—As to the indorsements required in such case, see O. V., rr. 3, 4, *post*, p. 137.

*Reference to record.*—See O. LXI., r. 19; O. V., r. 13. In District Registry cases, the name of the registry must be added: O. V., r. 13. For form of reference, see Dan. Forms, p. 1.

2. Any costs occasioned by the use of any forms of writs, and of indorsements thereon, other or more prolix than the forms herein-after prescribed, shall be borne by the party using the same, unless the Court or a Judge shall otherwise direct.

For forms of writs and indorsements, see Appendix A, *post*, p. 519.

The question of undue prolixity will be inquired into by the taxing officer: O. LXV., r. 27 (20), *post*, p. 492.

W.

K

## Order I. r. 2.

2.  
Other proceedings.

[O. I., r. 3.]

## Order II.

rr. 1, 2.

3.  
Writ of summons.

[O. II., r. 1.]

4.  
Costs of informal writ.  
[Cf. O. II., r. 2.]

Order II.  
rr. 3—6.

5.  
Form of writ.  
[O. II.,  
r. 3.]

3. The writ of summons for the commencement of an action shall, except in the cases in which any different form is hereinafter provided, be in one of the Forms Nos. 1, 2, 3 and 4 in Appendix A, Part I., with such variations as circumstances may require.

For these forms, see *post*, pp. 519—523.

*Variations in forms.*—For instances in which variations from the prescribed forms have been allowed, see *Bacon v. Turner*, 3 Ch. D. 275; *Keate v. Phillips*, W. N. (1878), 186.

*Administration actions.*—The writ in an administration action should be intitled “In the matter of the estate of A. B. deceased. Between, &c.” *Eyre v. Cox*, 24 W. R. 317. In such case the reference to the record (O. LXI., r. 19, *post*, p. 458; O. V., r. 13, *post*, p. 140) contains the initial letter of the name of the deceased person, and not, as in other cases, of the plaintiff.

6.  
Writ for service  
abroad.  
[O. II., r. 4.]

4. No writ of summons for service out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be issued without the leave of the Court or a Judge.

*Service out of the jurisdiction.*—See O. XI., *post*, p. 151, and notes thereto, where the subject is fully considered.

*Practice on making the application in the Chancery Division.*—See as to this, *Stigand v. Stigand*, 19 Ch. D. 460. But the practice there stated is now modified, in consequence of the provision in O. LV., r. 15, which renders it necessary for the leave to issue the writ in every instance to be given by the Judge in person. The following rules have been adopted in the Chancery Division:—

- (1.) One application is to be made before the issuing of the writ, both for leave to issue it, and for leave to serve it, or to give notice of it, out of the jurisdiction.
- (2.) The application must be supported by the affidavit required by O. XI., r. 4. [For form of affidavit, see *Dan. Forms*, p. 144.] No motion is to be made or summons issued.
- (3.) The unsealed writ is to be left at the Chambers of the Judge, with an office copy of the affidavit above mentioned.
- (4.) The order (if any) made upon the application is put upon the writ; thus, [*Chambers and date*]. Let this writ be issued with liberty to serve it [*or*, notice of it] on the defendant, at, or elsewhere in the (kingdom) of . . . . The time for the defendant to enter an appearance is to be (*insert the time*) after service. See *Dan. Forms*, p. 144, n. (c); 2 *Seton*, p. 1623.

*Practice in Queen's Bench Division.*—Leave cannot be given by a District Registrar (O. XXXV., r. 6); or Master (O. LIV., r. 12 (b)).

7.  
Form of writ  
for service  
abroad.  
[O. II., r. 5.]

5. A writ of summons to be served out of the jurisdiction, or of which notice is to be given out of the jurisdiction, shall be in one of the Forms Nos. 5, 6, 7 and 8 in Appendix A, Part I., with such variations as circumstances may require. Such notice shall be in one of the Forms Nos. 9 and 10 in the same Part, with such variations as circumstances may require.

For the forms here referred to, see *post*, pp. 523—525.

*Departure from prescribed forms.*—For cases in which writs issued in Forms Nos. 1 or 2 against foreign corporations having no place of business in this country have been set aside, see *Sedgwick v. Yedras Mining Co.*, 35 W. R. 780; *The W. A. Scholten*, 13 P. D. 8.

8.  
Special procedure under  
Bills of Exchange Act  
abolished.  
[O. II., r. 6 a.]

6. No writ shall hereafter be issued under the Summary Procedure on Bills of Exchange Act, 1855 (18 & 19 Vict. c. 67).

This Act is repealed by S. L. Rev. Act, 1883.

See *Smith v. Wilson*, 5 C. P. D. 25, for an instance of the application of O. XIV. to bills of exchange.



7. The writ of summons in every Admiralty action *in rem* shall be in one of the Forms Nos. 11 and 12 in Appendix A, Part I., with such variations as circumstances may require.

Order II.  
rr. 7, 8.

For the forms referred to, see *post*, pp. 526, 527.

8. Every writ of summons, and also (unless by any statute or by these rules it is otherwise provided) every other writ, shall bear date on the day on which the same shall be issued, and shall be tested in the name of the Lord Chancellor, or, if the office of Lord Chancellor shall be vacant, in the name of the Lord Chief Justice of England.

9.  
Writ in Admiralty action.  
[O. II., r. 7 a.]  
10.  
Date and teste of writ.  
[Cf. O. II., r. 8.]

As to vacancies in these offices, see further O. LXXII., *post*, p. 515.

A mistake in the *teste* is of no importance: *Wesson v. Stalker*, 47 L. T. 444.

### ORDER III.

#### INDORSEMENTS OF CLAIM.

Order III.  
rr. 1, 2.

1. The indorsement of claim shall be made on every writ of summons before it is issued.

11.  
Indorsement of claim.  
[O. III., r. 1.]

#### DIFFERENT KINDS OF INDORSEMENT DEALT WITH IN THIS ORDER:—

1. The "statement of the nature of the claim made, or of the relief or remedy required," prescribed by O. II., r. 1, *ante*, p. 129, and dealt with in the first five rules of this order;
2. The indorsement of the amount of debt and costs required, when the claim is for a debt, by r. 7 of this order; following s. 8 of the C. L. P. Act, 1852;
3. The special indorsement authorized by r. 6 of this order, to warrant proceedings to judgment notwithstanding appearance, under O. XIV., *post*, p. 166.
4. The indorsement of a claim for an account under r. 8 of this order, to warrant proceedings under O. XV., *post*, p. 170.

2. In the indorsement required by Order II., Rule 1, it shall not be essential to set forth the precise ground of complaint, or the precise remedy or relief to which the plaintiff considers himself entitled.

12.  
Essentials of indorsement.  
[Cf. O. III., r. 2.]

*Object of this indorsement.*—This seems to be to identify the controversy and the claim to which the action relates, so as, amongst other advantages, to facilitate a settlement without the action going farther. In certain cases, as where the defendant fails to appear, the indorsement will take the place of pleadings, and damages may be assessed upon it: O. XIII., r. 5, *post*, p. 164. But if the action proceeds and pleadings are delivered, the plaintiff in his claim must state both his complaint and the relief he seeks. He cannot rely upon this indorsement for either: O. XIX., r. 2, and O. XX., r. 1, *post*, pp. 202, 214.

*Amendment of indorsement.*—See O. XXVIII., r. 1, *post*, p. 242. Whenever a statement of claim is delivered, an amendment of the indorsement on the writ to make it accord with the claim is unnecessary. See O. XX., r. 4, *post*, p. 216; and see *Large v. Large*, W. N. (1877), 198; *Johnson v. Palmer*, 4 C. P. D. 258, at p. 262 (decided under the repealed rules); *sees*, where application is made for relief or remedy not claimed by the indorsement, before appearance or delivery of statement of claim: *Colebourne v. Colebourne*, 1 Ch. D. 690; Dan. Pr., p. 328; see, too, *Gee v. Bell*, 35 Ch. D. 160; *Law v. Philby*, 35 W. R. 450, in which cases it was held, that, in default of appearance by defendant, the plaintiff cannot, by his statement of claim, enlarge the scope of the claim indorsed on his writ.



**Order III.  
rr. 2—6.**

*Amendment in Chancery Division.*—See Practice Rules, *post*, p. 696; Dan. Pr., pp. 328—331. Before service an amendment may be made by leave of a master, on payment of a fee. Before appearance an order can be obtained on summons, or motion, or petition of course, but such order must not give leave to strike out a party on either side of the record, or to make a person a party who is out of the jurisdiction. After appearance, leave will be given, upon application with notice. The application should, as a rule, be by summons: *Wilson v. Church*, 9 Ch. D. 552; and see *Marriott v. Marriott*, 26 W. R. 416. No order need be drawn up (O. LII., r. 14), but a fiat giving leave to amend will be indorsed on the writ, and signed by the Chief Clerk.

*Amendment in other Divisions.*—See Chitt. Arch., pp. 242, 243; Practice Rules, *post*, p. 697.

13.  
Form of in-  
dorsement.  
[O. III., r. 3.]

3. The indorsement of claim shall be to the effect of such of the Forms in Appendix A, Part III., as shall be applicable to the case, or, if none be found applicable, then such other similarly concise form as the nature of the case may require.

For the forms here referred to, see *post*, pp. 535 *et seq.*

14.  
Representa-  
tive capacity.  
[O. III., r. 4.]

4. If the plaintiff sues, or the defendant or any of the defendants is sued, in a representative capacity, the indorsement shall show, in manner appearing by such of the Forms in Appendix A, Part III., Sec. VII., as shall be applicable to the case, or by any other statement to the like effect, in what capacity the plaintiff or defendant sues or is sued.

For the forms here referred to, see *post*, p. 542.

*Description of plaintiff in creditor's action.*—In an action for administration of the real and personal estate of a deceased debtor, the plaintiff must be described as suing on behalf of himself and all other the creditors; and the writ must be indorsed accordingly: *Worraker v. Pryer*, 2 Ch. D. 109; *Re Royle*, 5 Ch. D. 540; *Re Vincent*, 26 W. R. 94.

Where the claim for administration is confined to the personal estate, this is not necessary, though it is very usual in practice: *Re Blount*, 27 W. R. 865; *Re Greaves*, 18 Ch. D. 551, at p. 554; Dan. Pr., pp. 201, 230.

*Actions on behalf of a class.*—See O. XVI., r. 9, *post*, p. 175.

*Actions by or against representatives.*—See O. XVI., r. 8, *post*, p. 175; O. XVIII., r. 5 (joinder of claims in personal and representative capacity), *post*, p. 201.

*Denial of representative capacity.*—This must be pleaded specifically: O. XXI., r. 5, *post*, p. 218.

15.  
In Probate  
actions.  
[O. III., r. 5.]

5. In Probate actions the indorsement shall show whether the plaintiff claims as creditor, executor, administrator, residuary legatee, legatee, next of kin, heir-at-law, devisee, or in any and what other character.

For forms see Appendix A, Part III., Sect. V., *post*, p. 541.

16.  
Special in-  
dorsement.  
[Cf. O. III.,  
r. 6.]

6. In all actions where the plaintiff seeks only to recover a debt or liquidated demand in money payable by the defendant, with or without interest, arising (A.) upon a contract, express or implied, (as, for instance, on a bill of exchange, promissory note, or cheque, or other simple contract debt); or (B.) on a bond or contract under seal for payment of a liquidated amount of money; or (C.) on a statute where the sum sought to be recovered is a fixed sum of money or in the nature of a debt other than a penalty; or (D.) on a guaranty, whether under seal or not, where the claim against the principal is in respect of a debt or liquidated demand only; or (E.) on a trust; or (F.) in actions for the recovery of land, with or without a claim for rent or mesne profits, by a landlord against a

tenant whose term has expired or has been duly determined by a notice to quit, or against persons claiming under such tenant; the writ of summons may, at the option of the plaintiff, be specially indorsed with a statement of his claim, or of the remedy or relief to which he claims to be entitled. Such special indorsement shall be to the effect of such of the Forms in Appendix C, Sec. IV., as shall be applicable to the case.

For forms see Appendix A, Part I, No. 2, and Appendix C, Sect. IV., *post*, pp. 521, 560. A writ specially indorsed with a statement of claim need not have the word "delivered," nor the date of delivery at the end of such statement of claim: *Veale v. Automatic Boiler Co.*, 18 Q. B. D. 631.

This rule is an important extension of the repealed O. III., r. 6. It now comprises, besides the cases included in the old rule, certain actions for the recovery of land.

**EFFECT OF SPECIAL INDORSEMENT.**—The value of the special indorsement is that, in cases within the rule, it will entitle the plaintiff to final judgment notwithstanding appearance, unless the defendant can satisfy a Judge that he has a defence, or ought to be allowed to defend: O. XIV., *post*, p. 166; whereas in other cases in which the writ is indorsed with a claim for a liquidated demand, the plaintiff is only entitled to final judgment in default of appearance: O. XIII., rr. 3, 4, *post*, p. 163. As to default of pleading, where the writ is indorsed for a liquidated demand, see O. XXVII., rr. 2, 3, 6, 9, *post*, pp. 237—239.

The special indorsement, where used, is by O. XX., r. 1(a), *post*, p. 214, deemed to be the statement of claim, and no further statement is necessary or allowable.

A specially indorsed writ is not a pleading within the meaning of O. LXIV., r. 11, and service thereof may therefore be effected at any hour of the day: *Murray v. Stevenson*, 19 Q. B. D. 60. But service of a specially indorsed writ is delivery of a statement of claim to the defendant within the meaning of O. XXI., r. 6, so that the defendant has *ten days* from the time limited for appearance within which to deliver his defence: *Anlaby v. Prætorius*, 20 Q. B. D. 764.

**Cases under repealed rule (R. S. C. 1875, O. III., r. 6).**—The indorsement had to contain "the particulars of the amount sought to be recovered after giving credit for any payment or set-off." As to what was a sufficient indorsement under those words, see *Walker v. Hicks*, 3 Q. B. D. 8; *Parpaite v. Dickenson*, 26 W. R. 479; *Smith v. Wilson*, 5 C. P. D. 25. Any indorsement which would have been sufficient under s. 25 of the C. L. P. Act, 1852, was sufficient: *Aston v. Hurwitz*, 41 L. T. 521; *Yeatman v. Snow*, 28 W. R. 574. See *Godden v. Corsten*, 5 C. P. D. 17, as to particulars of credit given by the indorsement.

**Cases under present rule.**—An action on a foreign judgment is an action of debt arising out of a contract within this rule: *Grant v. Easton*, 13 Q. B. D. 302. A judgment for alimony, *pendente lite*, is not within the rule: *Bailey v. Bailey*, 13 Q. B. D. 855; nor a balance order for calls: *Chalk, Webb & Co. v. Tennent*, 57 L. T. 598. An action by mortgagee against mortgagor to recover possession, where the mortgage deed contained an attornment clause, is within sub-s. (F.) of the rule: *Daubuz v. Lavington*, 13 Q. B. D. 347 (overruling *Hobson v. Monk*, W. N. (1884), 17); *Hall v. Comfort*, 18 Q. B. D. 11. The rule does not apply to an action by a landlord against a tenant under a clause for forfeiture in an agreement: *Burns v. Walford*, W. N. (1884), 31; *Mansergh v. Rimell*, W. N. (1884), 34. The writ can be indorsed under sub-s. (F.) only when the plaintiff was party to the lease or agreement under which the land sought to be recovered has been held, or when the defendant has paid rent to the plaintiff, or when the defendant is otherwise estopped from denying the plaintiff's title: *Casey v. Hellyar*, 17 Q. B. D. 97. A writ which claims foreclosure or sale and a receiver, besides payment of the debt and interest, is not specially indorsed within the rule: *Imbert-Terry v. Carter*, 34 Ch. D. 506.

The language of the present rule is different from the repealed rule, but having regard to the forms in the Appendix the same particularity as was required for special indorsements under the old rule appears now to be required for special indorsements under this rule.

The forms given are most of them new. They provide for all the cases mentioned in the rules, and the use of them, when applicable, is now obligatory: see O. XIX., r. 5, *post*, p. 205.



**Order III.  
rr. 7, 8.**

17.  
Indorsement  
of sum on  
payment of  
which action  
stayed.  
[O. III., r. 7.]

7. Wherever the plaintiff's claim is for a debt or liquidated demand only, the indorsement, besides stating the nature of the claim, *shall* state the amount claimed for debt, or in respect of such demand, and for costs respectively, and shall further state, that upon payment thereof within *four days* after service, or in case of a writ not for service within the jurisdiction within the time allowed for appearance, further proceedings will be stayed. Such statement shall be in the Form in Appendix A, Part III., Sec. III. The defendant may, notwithstanding such payment, have the costs taxed, and if more than one-sixth shall be disallowed, the plaintiff's solicitor shall pay the costs of taxation.

See form, *post*, p. 537. It will be observed that the rule does not apply to the class (F) mentioned in rule 6 (actions for recovery of land).

The use of this indorsement, it will be observed, is obligatory.

*Effect of indorsement.*—This rule is to the same effect as s. 8 of the C. L. P. Act, 1852.

When the defendant wishes to take advantage of this rule, but the sum claimed for costs is excessive, he has three courses open to him. (1) He may pay the amount claimed, have the costs taxed, and then get back the excess; or, (2) he may take out a summons to have the action stayed on payment of the amount claimed, and a less sum for costs; or, (3) he may pay into Court in accordance with O. XXII., r. 1. See the scales of costs allowed under this rule, and under Orders XIII. and XIV., *post*, pp. 704, 705.

If the plaintiff accept payment after the four days have expired the defendant is entitled to have costs taxed in accordance with this rule: *Hoole v. Earnshaw*, 39 L. T. 410.

18.  
Indorsement  
of claim for  
account.  
[Cf. O. III.,  
r. 8.]

8. In all cases in which the plaintiff, in the first instance, desires to have an account taken, the writ of summons shall be indorsed with a claim that such account be taken.

*Effect of indorsement.*—The use of this indorsement is optional; but as, under O. XV., it will ordinarily entitle the plaintiff to an order for an account (unless the defendant succeeds in satisfying the Court that there is a preliminary question to be tried), which order can be obtained at chambers, the advantages of its use are obvious. An order for an account of a simple character may be obtained in the Queen's Bench Division: *York v. Stowers*, W. N. (1883), 174. See Chitt. Arch., p. 1341.

As to accounts under O. XV., see *post*, p. 170.

**Order IV. r. 1.**

19.  
Address of  
solicitor and of  
plaintiff.  
[Cf. O. IV.,  
r. 1.]

**ORDER IV.****INDORSEMENT OF ADDRESS.**

1. In all cases where a writ of summons is issued out of the Central Office, the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ and notice in lieu of service of a writ the address of the plaintiff, and also his own name or firm and place of business, and also, if his place of business shall be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him. And where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

*Address of plaintiff.*—The address indorsed must be that of the plaintiff's place of "residence:" *Mee v. Denbigh*, 27 Sol. J. 617. If the place of residence



is not correctly given, the plaintiff may be ordered to amend his writ by inserting the correct address, and in default a stay of proceedings may be ordered. And where the plaintiff has given an illusory address, or appears to have no permanent residence, or to have changed his residence during the suit for the purpose of avoiding service, he may, it seems, be required to give security for costs: *Ibid.* n. (f); *Morgan*, p. 541, n. (m), (2); 2 *Seton*, p. 1644; *Chitt. Arch.*, p. 226.

*Address of solicitor and agent.*—Where a retainer was given to the country solicitor, but the writ issued by the London agents did not in the indorsement describe them as such, but as solicitors for the plaintiff, it was held that plaintiff was entitled to have her name struck out of the writ as having been issued without her authority: *Wray v. Kemp*, 26 Ch. D. 169; and see *Re Scholes*, 32 Ch. 245.

*Address for service of defendant.*—See O. XII., rr. 10, 11, 12, *post*, pp. 158, 159, and O. XXXV., r. 18, *post*, p. 283.

2. In all cases where a writ of summons is issued out of the Central Office a plaintiff suing in person shall indorse upon the writ and notice in lieu of service of a writ his place of residence and occupation, and also, if his place of residence shall be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, another proper place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, where writs, notices, pleadings, petitions, orders, summonses, warrants, and other documents, proceedings, and written communications may be left for him.

20.  
Address of  
plaintiff in  
person.  
[Cf. O. IV.,  
r. 2.]

3. In all cases where a writ of summons is issued out of a District Registry the solicitor of a plaintiff suing by a solicitor shall indorse upon the writ, and notice in lieu of service of a writ, the address of the plaintiff, and his own name or firm and place of business, which shall, if his place of business be within the district of the Registry, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice; and where the solicitor issuing the writ is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor. Where the plaintiff sues in person, he shall indorse upon the writ, and notice in lieu of service of a writ, his place of residence and occupation, which shall, if his place of residence be within the district, be an address for service, and if such place be not within the district, he shall add an address for service within the district, and, where the defendant does not reside within the district, he shall add a further address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice.

21.  
Address when  
writ issued in  
District  
Registry.  
[Cf. O. IV.,  
r. 3 a.]

*Sufficient address for service.*—See *Smith v. Dobbin*, 3 Ex. D. 338. In that case the indorsement stated that the writ was “issued by Thomas Garrald of Hereford, whose address for service is Thomas Garrald at Thomas White and Sons, London.” Defendant, served out of the registry, appeared in London, and gave notice of appearance at the address for service in London. Held, that the writ was correctly indorsed, but notice of appearance was not sufficient within O. XII., r. 9: see *post*, p. 158.

Order IV.  
rr. 1—3.

## Order IV. r. 4.

22.

Proceedings  
not com-  
menced by writ  
of summons.

4. In all cases where proceedings are commenced otherwise than by writ of summons, the preceding Rules of this Order shall apply to the document by which such proceedings shall be originated as if it were a writ of summons.

This rule was introduced in 1883.

*Proceedings originating otherwise than by writ.*—The rule applies to proceedings originating by notice of motion, petition, or summons. See O. LII., O. LIV., and O. LV., *post*, pp. 386, 394, 411, as to such proceedings. As to indorsement of address of solicitor and agent on a petition, see *Re Scholes*, 32 Ch. D. 245.

## ORDER V.

## ISSUE OF WRITS OF SUMMONS.

I. *Place of Issue.*Order V.  
rr. 1, 2.

23.

Option as to  
place of issue.  
[O. V., r. 1.]

1. In any action other than a Probate action, the plaintiff wherever resident may issue a writ of summons out of any District Registry.

24.

Issue of writs  
of summons  
out of Central  
Office.  
[Cf. O. V.,  
r. 1 a.]

2. Every writ of summons not issued out of a District Registry shall be issued out of the Central Office.

*Writ Department of Central Office.*—Under this rule all writs issued in London are issued out of a single department of the Central Office, namely, the Writ, Appearance, and Judgment Department, as to which see O. LXL., r. 1, *post*, p. 455. Formerly they issued out of different offices according to the Division in which the actions were commenced. For Practice Rules as to issuing writs, see Rules of Practice Masters, *post*, p. 696; Dan. Forms, p. 128.

**PLACE WHERE PROCEEDINGS ARE TO BE TAKEN.**—It may be convenient here to state shortly the effect of the Rules with respect to the place in which proceedings are to be carried on, and the jurisdiction of District Registrars:

Any writ of summons, except in a Probate action, may be issued, at the option of the plaintiff, either in the office in London, or in any District Registry. See r. 1.

If the writ is issued in London, the appearances will be entered in the Central Office (O. XII., rr. 1, 2, *post*, p. 157).

If the writ is issued in a District Registry, any defendant residing or carrying on business within the district must appear there (O. XII., r. 4, *post*, p. 157): the district being, by S. C. Jud. Act, 1873, s. 60, *ante*, p. 48, fixed by Order in Council. See the Order, *post*, p. 799. Any defendant not residing or carrying on business within the district may appear either in the District Registry or at the Central Office (O. XII., r. 5, *post*, p. 157).

If the defendant or all the defendants appear in the District Registry, the action will proceed there (O. XII., r. 6, *post*, p. 157).

If the defendant or any of the defendants appear in London, the action will proceed there (O. XII., r. 7, *post*, p. 157).

Although the action proceeds in London, the Court or a Judge may still order any books or documents to be produced or accounts to be taken or inquiries made in any District Registry (S. C. Jud. Act, 1873, s. 66, *ante*, p. 49). And in this case, as well as when the action proceeds in a District Registry, the trial may be anywhere (O. XXXVI., r. 1 *et seq.*, *post*, p. 284).

When the action proceeds in the District Registry, the proceedings are in general to be taken there:

i. If final judgment can be entered, or an order for an account had by default, down to such judgment or order (O. XXXV., rr. 1, 2, 3, *post*, pp. 278—280).



ii. If an interlocutory judgment can be entered for default either of appearance or pleading, both it and, after damages are assessed, final judgment may be entered in the District Registry (*Ibid.*).

iii. Judgment after trial is to be entered in the Registry unless otherwise ordered (*Ibid.*).

As to entry for trial of actions or issues, see O. XXXVI., rr. 16, 22A—28, *post*, pp. 295—298.

*Proceedings in District Registries.*—As to the jurisdiction of the Registrar while an action is proceeding in a District Registry, see O. XXXV., rr. 6 *et seq.*, and notes thereto, *post*, p. 280.

An appeal lies to a Judge from a District Registrar, as from a Master (O. XXXV., r. 9, *post*, p. 281). Execution may issue and costs be taxed in the Registry (O. XXXV., rr. 4 and 5, *post*, p. 280).

When an action proceeds in a District Registry, all documents required to be filed are to be filed there (O. XXXV., r. 19, *post*, p. 283).

As to removal of actions to and from District Registries, see O. XXXV., rr. 14 *et seq.*, and notes thereto, *post*, p. 282.

As to Funds in Court in District Registries, see O. XXXV., r. 23; S. C. Funds Rules, 1886, r. 111; S. C. (District Registry) Funds Rules, 1887, *post*, pp. 284, 757, 771; and as to taxation of costs in Chancery proceedings in a District Registry, see *Day v. Whitaker*, 6 Ch. D. 734; *Wilson v. Altree*, 27 Ch. D. 242; *post*, p. 280.

*Issuing of writ not a judicial act.*—The plaintiff should have a complete cause of action against the defendant at or before the issue of the writ of summons, that is, before it is sealed by the proper office (see r. 11, *infra*): Dan. Pr., p. 307; and the issuing of a writ of summons is not so far a judicial act that the Court will not take cognizance of the fact that it was not issued till later in the day than the cause of action arose: *Clarke v. Bradlaugh*, 8 Q. B. D. 63.

3. In all cases where a defendant neither resides nor carries on business within the district out of the Registry whereof a writ of summons is issued, there shall be a statement on the face of the writ of summons that such defendant may cause an appearance to be entered at his option either at the District Registry or at the Central Office, or a statement to the like effect.

25.

Where defendant not within district of registry.  
[O. V., r. 2.]

See forms, App. A, Part I., Nos. 3, 4, *post*, p. 522.

"Resides or carries on business."—For the meaning of this phrase, and for the cases bearing on it, see Dan. Pr., p. 319, n. (e).

4. In all cases where a defendant resides or carries on business within the district, and a writ of summons is issued out of the District Registry, there shall be a statement on the face of the writ of summons that the defendant do cause an appearance to be entered at the District Registry, or a statement to the like effect.

26.

Where defendant is within such district.  
[O. V., r. 3.]

See forms, App. A, Part I., Nos. 3, 4, *post*, p. 522.

## II. Assignment of Causes, &c.

5. Subject to the power of transfer, every person by whom any cause or matter may be commenced in the High Court of Justice, which would have been within the non-exclusive cognizance of the High Court of Admiralty if the principal Act had not passed, shall assign such cause or matter to any one of the Divisions of the said High Court, including the Probate Divorce and Admiralty Division, as he may think fit, by marking the document by which the same is commenced with the name of the Division, and giving notice thereof to the proper officer of the Court.

27.

Choice of Division.  
[*Cf.* O. V., r. 4.]

*Statutory provisions.*—By S. C. Jud. Act, 1873, s. 34 (*ante*, p. 33), certain classes of causes (subject to Rules of Court) were assigned to the various



**Order V.  
rr. 5—9.**

Divisions of the High Court of Justice: those assigned to the Probate Divorce and Admiralty Division being, in addition to pending matters, all causes and matters hitherto within the *exclusive* cognizance of the Probate, Divorce, or Admiralty Courts. By S. C. Jud. Act, 1873, s. 11 (*ante*, p. 72), a plaintiff was empowered (subject to Rules of Court and the provisions of the Act of 1873) to lay his action in any Division, not being the Probate Divorce and Admiralty Division. The result of those sections, if uncontrolled by rule, would have been to deprive suitors of the power of taking into the Court of Admiralty any cause in which that Court had hitherto had concurrent jurisdiction with any other Court. Hence the necessity for the above rule.

*Causes and matters specially assigned to Chancery Division.*—See as to these, S. C. Jud. Act, 1873, s. 34, *ante*, p. 33. As to marking the writ, see *ibid.*, ss. 33, 42, *ante*, pp. 33, 38, and r. 9, *infra*.

*Choice of Division.*—See S. C. Jud. Act, 1875, s. 11, *ante*, p. 72. As to marking the writ, see O. II., r. 1, *ante*, p. 129. As to notice to the proper officer, see r. 14, *infra*.

*Assignment to master in Q. B. Div.*—See rr. 6, 7, 8, *infra*.

*Transfers.*—See O. XLIX., rr. 1—7, *post*, pp. 367—370, and notes thereto.

28.  
Assignment to  
master in  
Q. B. D.

**6.** Every action in the Queen's Bench Division not proceeding in a District Registry shall be assigned to one of the Masters of the Supreme Court at the time and in manner provided by Order LIV., and all documents and proceedings therein shall thereafter be marked with the name of the Master to whom the action has become so assigned, and every application or proceeding therein which by these Rules is to be heard and dealt with by a Master, including taxation of the costs, shall be heard and dealt with by such Master.

*Assignment to Master.*—This provision was introduced in 1883. The machinery of assignment is provided by O. LIV., rr. 13—18, *post*, p. 397. Under these rules, upon any application in any action being made to a Master, the action becomes assigned to him. Six of the Masters sit permanently as Masters at chambers during each sittings, and after the sittings of any Master have ceased, applications in an action assigned to him are made to the Master in his own room.

29.  
Transfer from  
master to  
master.

**7.** Where actions have become assigned to the Masters under the provisions of the last preceding Rule, it shall be lawful for the Lord Chief Justice of England to transfer all or any number of actions from any one Master to any other Master.

30.  
Absence or  
illness of  
master.

**8.** During the absence from illness or any other urgent cause, or during a vacancy in the office, of any Master to whom any action may have been assigned, or during any vacation, any other Master may hear and dispose of any application therein on behalf or in the place of such Master.

31.  
Assignment to  
Judge in  
Chancery  
Division.

**9.** Subject to the power of transfer, and to the special provision contained in sub-section (e) of this Rule, and subject also to the power of the Lord Chancellor by order from time to time otherwise to direct, every cause or matter which shall hereafter be commenced in the Chancery Division shall be assigned to and marked with the name of one of the Judges thereof in manner hereinafter mentioned, and shall no longer be marked with the name of such Judge as the plaintiff or petitioner may in his option think fit:—

(a) Where the commencement is by writ, it shall be the duty of the officer issuing such writ to mark the same with the

Writ.

name of one of the Judges of the Chancery Division to whom for the time being Chambers are attached (to be ascertained in the manner now used in the distribution of business amongst the Conveyancing Counsel of the Court);

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**r. 9, (a)–(f).**

As to distribution of business amongst the Conveyancing Counsel, see O. LI., rr. 9–13, *post*, pp. 385, 386.

- (b) Where the commencement is by originating summons, such summons shall be taken out in the Writ Department of the Central Office, and it shall be the duty of the officer issuing such summons to mark the same with the name of one of the said Judges, to be ascertained in manner aforesaid;

Originating  
summons.

As to originating summonses, see O. LV., rr. 3 and 20–24, *post*, pp. 404, 411–413.

*Liverpool and Manchester Registries.*—Originating summonses may be sealed and issued in the Liverpool and Manchester District Registries: R. S. C., May, 1887, r. 1, *post*, p. 516.

- (c) Where the commencement is by notice of motion, such notice of motion shall be brought to the Writ Department of the Central Office, and it shall be the duty of the officer by whom originating summonses are issued to mark the same with the name of one of the said Judges, to be ascertained in manner aforesaid;

Notice of  
motion.

As to motions, see O. LII., *post*, pp. 386–389.

- (d) Where the commencement is by petition, such petition shall be brought to the office of the Registrars of the Chancery Division, and shall be marked by an officer to be charged by the Registrars with that duty with the name of one of the said Judges, to be ascertained in manner aforesaid;

Petition.

As to petitions, see O. LII., *post*, pp. 391, 392.

- (e) Where a cause or matter has been assigned to one of the said Judges, as above mentioned, every subsequent writ, summons, or petition, relating to the administration of the same trust, or the winding up of the same company, or so connected therewith as to be conveniently dealt with by the same Judge, shall whenever practicable be marked by the proper officer with the name of such Judge; and the party or solicitor presenting such writ, summons, or petition shall, if there be to his knowledge such relation or connexion, so certify; such certificate shall be in the Form No. 19, in Appendix A, Part I., with such variations as circumstances may require, *and such certificate shall be counter-signed by the chief clerk to whom according to the distribution of business such cause or matter belongs;*

Other pro-  
ceedings.

The words in italics were added by R. S. C., Dec. 1885, r. 1.  
For form of certificate, see *post*, p. 529.

- (f) For the purposes of sub-sections (a), (b), and (c) of this Rule separate rotations shall be kept.

Rotations.

This was added by R. S. C., Dec. 1885, r. 2.



**Order V.  
rr. 9—14.**

Cases commenced in Liverpool and Manchester District Registries.

Subject as aforesaid, every cause or matter in the said division hereafter commenced in the District Registry of Liverpool or the District Registry of Manchester shall be marked with the name of such Judge of the Chancery Division as the Lord Chancellor may by order from time to time direct.

This was added by R. S. C., Dec. 1886, r. 1.

By order dated 5th April, 1887, causes or matters commenced in the District Registries of Liverpool or Manchester must be marked with the name of Kekewich, J.

Chancery actions commenced in the above Registries pursuant to Rules of the Supreme Court, December, 1886, and May, 1887, and assigned, by the direction of the Lord Chancellor, to a Judge, under O. V., r. 9, must, on removal to London, remain assigned to such Judge until ordered to be transferred to some other Judge, or until further order: Order of Pract. Masters, Aug. 11, 1887, as amended 12 December, 1887.

*Assignment to Judge: when to be made.*—Before the issue of the writ: Central Office Rules, *post*, p. 701; Dan. Forms, p. 128.

**III. Generally.**

32.  
Preparation of writ.  
[Cf. O. V., r. 5.]

**10.** Writs of summons shall be prepared by the plaintiff or his solicitor, and shall be written or printed, or partly written and partly printed, on paper of the same description as by these Rules directed in the case of proceedings directed to be printed.

As to printing and paper, see O. LXVI., *post*, p. 504.

33.  
Sealing and issue of writ.  
[O. V., r. 6.]

**11.** Every writ of summons shall be sealed by the proper officer, and shall thereupon be deemed to be issued.

See O. LXI., r. 1, *post*, p. 455, which regulates the Writ, Appearance and Judgment Department in the Central Office; O. LXXI., r. 1, *post*, p. 514.

34.  
Copy to file.  
[O. V., r. 7.]

**12.** The plaintiff or his solicitor shall, on presenting any writ of summons for sealing, leave with the officer a copy, written or printed, or partly written and partly printed, on paper of the description aforesaid, of such writ and all the indorsements thereon, and such copy shall be signed by or for the solicitor leaving the same, or by the plaintiff himself if he sues in person.

See further the Practice Rules on this subject, *post*, pp. 696, 706; Dan. Pr., p. 128.

35.  
Filing entry in cause book.  
[O. V., r. 8.]

**13.** The officer receiving such copy shall file the same, and an entry of the filing thereof shall be made in a book to be called the Cause Book, which is to be kept in the manner in which Cause Books are now kept, and the action shall be distinguished by the date of the year, a letter, and a number, in the manner in which causes are now distinguished in such Cause Books; and when such action shall be commenced in a District Registry it shall be further distinguished by the name of such Registry.

As to the Cause Book, see Practice Rules, *post*, p. 696; O. LXI., rr. 20, 21, *post*, pp. 458, 459.

36.  
Notice of assignment of action.  
[Cf. O. V., r. 9.]

**14.** Notice to the proper officer of the assignment of an action to any Division of the Court shall be sufficiently given by leaving with him the copy of the writ of summons.

See S. C. Jud. Act, 1875, s. 11, *ante*, p. 72, and notes to rules 5, 9, *supra*.



IV. *In Particular Actions.*

Order V.  
rr. 15—17.

15. The issue of a writ of summons in Probate actions shall be preceded by the filing of an affidavit made by the plaintiff or one of the plaintiffs in verification of the indorsement on the writ.

37.  
Probate  
actions.  
[O. V., r. 10.]

*Affidavit.*—As to the certificate of the affidavit required by this rule being filed, see Practice Rules, *post*, p. 697.

*Writ for Receiver before Probate.*—Where an executor, before obtaining probate, and without the consent of his co-executor, intermeddled with the assets and made preparations to sell them, the Court granted leave to the co-executor to issue a writ for an injunction and a receiver: *In the Goods of Moore*, 36 W. R. 576. See, too, *Re Parker, Dearing v. Brooks*, 54 L. J., Ch. 694.

16. In Admiralty actions *in rem* a warrant for the arrest of property (which shall be in the Form No. 17 in Appendix A, Part I., with such variations as circumstances may require) may be issued at the instance either of the plaintiff or of the defendant at any time after the writ of summons has issued, but no warrant of arrest shall be issued until an affidavit by the party or his agent has been filed, and the following provisions complied with:—

38.  
Admiralty  
actions.  
[Cf. O. V.,  
r. 11 a.]

For the Form here referred to, see *post*, p. 529. For forms of affidavit, see *post*, p. 528.

(a) The affidavit shall state the name and description of the party at whose instance the warrant is to be issued, the nature of the claim or counter-claim, the name and nature of the property to be arrested, and that the claim or counter-claim has not been satisfied;

Contents of  
affidavit in  
action *in rem*.

The word “counter-claim” was added in 1883. It was omitted from the corresponding repealed provision.

(b) In an action of wages or of possession the affidavit shall state the national character of the vessel proceeded against; and if against a foreign vessel, that notice of the commencement of the action has been given to the consul of the State to which the vessel belongs, if there be one resident in London, and a copy of the notice shall be annexed to the affidavit;

In action of  
wages or pos-  
session.

The extension of this rule to actions of possession was introduced in 1883. For form of writ of possession, see *post*, p. 601.

If the consent of the foreign consul is not given the Court has a discretion whether it will allow the suit to proceed or stay it, though the Court will not in general entertain a suit in the face of a protest by the foreign consul: *The Nina*, L. R., 2 A. & E. 44.

(c) In an action of bottomry, the bottomry bond, and if in a foreign language also a notarial translation thereof, shall be produced for the inspection and perusal of the Registrar, and a copy of the bond, or of the translation thereof, certified to be correct, shall be annexed to the affidavit;

In action of  
bottomry.

(d) In an action of distribution of salvage the affidavit shall state the amount of salvage money awarded or agreed to be accepted, and the name, address, and description of the party holding the same.

In action of  
distribution of  
salvage.

As to service of the writ and warrant of arrest, see O. IX., Part IV., *post*, p. 150.

39.  
Waiver in  
wages actions.  
[Cf. O. V.,  
r. 11 a (2).]

17. The Court or a Judge may in any case, if they or he think fit, allow the warrant to issue, although the affidavit in Rule 16

Order V.  
r. 17.

mentioned may not contain all the required particulars, and in an action of wages the Court or Judge may also waive the service of the notice, and in an action of bottomry the production of the bond.

Order VI.  
rr. 1, 2.

## ORDER VI.

## CONCURRENT WRITS.

40.  
Concurrent  
writs may be  
issued.  
[O. VI., r. 1.]

1. The plaintiff in any action may, at the time of or at any time during *twelve months* after the issuing of the original writ of summons, issue one or more concurrent writ or writs, each concurrent writ to bear *teste* of the same day as the original writ, and to be marked with a seal bearing the word "concurrent," and the date of issuing the concurrent writ; and such seal shall be impressed upon the writ by the proper officer: Provided always, that such concurrent writ or writs shall only be in force for the period during which the original writ in such action shall be in force.

Cf. C. L. P. Act, 1852, s. 9.

When concurrent writ required.—See Dan. Pr., p. 325; Chitt. Arch., p. 228; Chitt. Forms, p. 93.

Enlargement of time.—See O. LXIV., r. 7, *post*, p. 469, and *Eyre v. Cox*, 46 L. J., Ch. 316.

41.  
Writs for service within  
and without  
jurisdiction.  
[O. VI., r. 2.]

2. A writ for service within the jurisdiction may be issued and marked as a concurrent writ with one for service, or whereof notice in lieu of service is to be given, out of the jurisdiction; and a writ for service, or whereof notice in lieu of service is to be given, out of the jurisdiction may be issued and marked as a concurrent writ with one for service within the jurisdiction.

This rule is identical with s. 22 of C. L. P. Act, 1852.

*Practice under the Rule.*—No leave is required to issue a writ for service within the jurisdiction concurrent with one for service out of the jurisdiction; but *secus* as to a writ for service out of the jurisdiction concurrent with one for service within the jurisdiction: O. II., r. 4, *ante*, p. 130; Dan. Pr., p. 326; *Beddington v. Beddington*, 1 P. D. 426.

The application is made *ex parte*, by motion, or summons: see Dan. Pr., pp. 325, 326; Dan. Forms, pp. 130, 131; Chitt. Arch., p. 228.

*Concurrent writ for service out of jurisdiction—Original writ renewed.*—The Court has power to give leave for the issue of a concurrent writ for service out of the jurisdiction, although the original writ was issued for service within the jurisdiction and has been renewed, and although there is only one defendant to the action. Where the writ has been renewed such leave may be given, notwithstanding that the enlargement of time for issuing a concurrent writ may affect the operation of the Statute of Limitations: *Smallpage v. Tonge*, 17 Q. B. D. 644.

*Substituted service within, of writ issued for service out of, jurisdiction.*—Where a writ has been issued for service out of the jurisdiction, and the defendant is abroad, a Judge, if the attendant circumstances warrant substitution, may order a copy of such writ to be served within the jurisdiction, although it is not in the form used for service within the jurisdiction: *Ford v. Shepherd*, 53 L. T. 564.



ORDER VII.

I. DISCLOSURE BY SOLICITORS AND PLAINTIFFS.

1. Every solicitor whose name shall be indorsed on any writ of summons shall, on demand in writing made by or on behalf of any defendant who has been served therewith or has appeared thereto, declare forthwith in writing whether such writ has been issued by him or with his authority or privity; and if such solicitor shall declare that the writ was not issued by him or with his authority or privity, all proceedings upon the same shall be stayed, and no further proceedings shall be taken thereupon without leave of the Court or a Judge.

42.  
Plaintiff's  
solicitor.  
[Cf. O. VII.,  
r. 1.]

The present rule differs from the former one by requiring the declaration to be in writing.

*Practice under the Rule.*—See Dan. Pr., pp. 317, 371; 2 Seton, p. 1540; Chitt. Arch., pp. 115, 250. For forms of proceedings, see Dan. Forms, pp. 185, 186; Chitt. Forms, p. 97.

2. When a writ is sued out by partners in the name of their firm, the plaintiffs or their solicitors shall, on demand in writing by or on behalf of any defendant, forthwith declare in writing the names and places of residence of all the persons constituting the firm on whose behalf the action is brought. And if the plaintiffs or their solicitors shall fail to comply with such demand, all proceedings in the action may, upon an application for that purpose, be stayed upon such terms as the Court or a Judge may direct. And when the names of the partners are so declared, the action shall proceed in the same manner and the same consequences in all respects shall follow as if they had been named as the plaintiffs in the writ. But all proceedings shall, nevertheless, continue in the name of the firm.

43.  
Partners  
plaintiffs.  
[Cf. O. VII.,  
r. 2.]

Cf. C. L. P. Act, 1852, s. 7.

This rule differs from the former rule by requiring the declaration to be in writing.

*Practice under the Rule.*—See Dan. Pr., pp. 78, 79, 371; Chitt. Arch., p. 1092. For forms of proceedings, see Dan. Forms, pp. 30, 31; Chitt. Forms, p. 534.

*Disclosure of members of firm at time cause of action accrued.*—By O. XVI., r. 14, *post*, p. 178, any party to an action in which partners either sue or are sued in the name of their firm may apply by summons for a statement of the names of the partners, to be furnished in such manner, and verified on oath or otherwise, as may be ordered.

*Proceedings by and against partners generally.*—See O. IX., r. 6, *post*, p. 147, and note thereto.

II. CHANGE OF SOLICITORS.

3. A party suing or defending by a solicitor shall be at liberty to change his solicitor in any cause or matter, without an order for that purpose, upon notice of such change being filed in the Central Office, or in the District Registry, if the cause or matter is proceeding therein; but until such notice is filed and a copy thereof served, and (in causes or matters pending in the Chancery Division) left in the Chambers of the Judge to whom the cause or matter is assigned, the former solicitor shall be considered the solicitor of the party,

44.  
Change of  
solicitors.



Order VII.  
r. 3.

*until the final conclusion of the cause or matter, whether in the High Court or the Court of Appeal.*

This rule was introduced in 1883, and established an uniform practice for all Divisions.

*Change of Solicitor.*—See Dan. Pr., pp. 1990—1993; Chitt. Arch., p. 109. For forms of notices under this rule, see Dan. Forms, pp. 864, 865; Chitt. Forms, p. 29.

*Discharge of Solicitor.*—A solicitor cannot discharge himself: *Wright v. King*, 9 Beav. 161. Where solicitors, who were on the record for defendants, gave notice that they would no longer act, and obtained from the Vacation Judge *ex parte* an order removing their names from the record, it was held that service upon the solicitors of notice to the defendants was good service on the defendants: *De Mora v. Concha*; *In re Ward, Mills & Co.*, W. N. (1887), 194.

“*Until the final conclusion,*” &c.—The words of the above rule printed in italics were added by R. S. C., Dec. 1885, r. 3. They dispose of the difficulty which was suggested in the case of *De La Pole v. Dick*, 29 Ch. D. 351. A solicitor who has recovered judgment for his client under an ordinary retainer has no authority, without special instructions, to engage in proceedings in interpleader: *James v. Richnell*, 20 Q. B. D. 164.

Order VIII.  
r. 1.

## ORDER VIII.

## RENEWAL OF WRIT.

45.  
Currency of  
writ.  
Renewal.  
[O. VIII.,  
r. 1.]

Effect.

1. No original writ of summons shall be in force for more than *twelve months* from the day of the date thereof, including the day of such date; but if any defendant therein named shall not have been served therewith, the plaintiff may, *before the expiration of the twelve months*, apply to the Court or a Judge for leave to renew the writ; and the Court or Judge, if satisfied that reasonable efforts have been made to serve such defendant, or for other good reason, may order that the original or concurrent writ of summons be renewed for *six months* from the date of such renewal inclusive, and so from time to time during the currency of the renewed writ. And the writ shall in such case be renewed by being marked with a seal bearing the date of the day, month, and year of such renewal; such seal to be provided and kept for that purpose at the proper office, and to be impressed upon the writ by the proper officer, upon delivery to him by the plaintiff or his solicitor of a memorandum in Form No. 18 in Appendix A, Part I., with such variations as circumstances may require; and a writ of summons so renewed shall remain in force and be available to prevent the operation of any statute whereby the time for the commencement of the action may be limited, and for all other purposes, from the date of the issuing of the original writ of summons.

For Form No. 18 in Appendix A, see *post*, p. 529; and for form of order, see App. K, No. 22, *post*, p. 617.

*Practice under the Rule.*—In the Chancery Division application may be made *ex parte*, by motion or summons, but is more frequently made by *ex parte* application without a summons, the memorandum giving leave being indorsed on the writ. See Dan. Pr., pp. 326, 327; Dan. Forms, p. 131, n. (b); and see Chitt. Arch., p. 229. For forms of proceedings, see Dan. Forms, pp. 131, 132; Chitt. Forms, p. 94.

*Time for renewal.*—The twelve months run from the date of the writ: *Eyre v. Cox*, 46 L. J., Ch. 316. But in that case Jessel, M. R., under R. S. C., 1875, O. LVII., r. 6 [now O. LXIV., r. 7, *post*, p. 469], allowed the writ to be renewed after its year of currency had expired. Where the Statute of Limitations had run in the meantime, the Court refused to renew: *Doyle v. Kaufman*, 3 Q. B. D. 7, 340.

2. The production of a writ of summons purporting to be marked with the seal of the Court, showing the same to have been renewed in manner aforesaid, shall be sufficient evidence of its having been so renewed, and of the commencement of the action as of the first date of such renewed writ for all purposes.

Order VIII.  
rr. 2, 3.

46.  
Evidence of  
renewal, &c.  
[O. VIII.,  
r. 2.]

This rule is taken from s. 13 of the C. L. P. Act, 1852. See *Fisher v. Cox*, 16 L. T. 397, decided on that section.

3. Where a writ, of which the production is necessary, has been lost, the Court or a Judge, upon being satisfied of the loss, and of the correctness of a copy thereof, may order that such copy shall be sealed and served in lieu of the original writ.

47.  
Loss of writ.

This rule was introduced in 1883.

*Practice under the Rule.*—Application is made by summons, supported by affidavit proving loss of the original. See Dan. Forms, p. 132. For Practice Rules as to procedure under this rule, see *post*, p. 701.

The rule obviates the difficulty which arose in *Davies v. Garland*, 1 Q. B. D. 250.

## ORDER IX.

Order IX.  
rr. 1, 2.

### SERVICE OF WRIT OF SUMMONS.

#### I. *Mode of Service.*

1. No service of writ shall be required when the defendant, by his solicitor, undertakes in writing to accept service and enters an appearance.

48.  
Undertaking  
to accept ser-  
vice.

*Breach of undertaking by solicitor.*—Renders him liable to attachment: O. XII., r. 18, *post*, p. 160.

[O. IX., r. 1.]

*Undertaking in Admiralty actions in rem.*—See r. 10, *infra*.

2. When service is required the writ shall, wherever it is practicable, be served in the manner in which personal service is now made, but if it be made to appear to the Court or a Judge that the plaintiff is from any cause unable to effect prompt personal service, the Court or Judge may make such order for substituted or other service, or for the substitution for service of notice, by advertisement, or otherwise, as may be just.

49.  
Personal ser-  
vice.  
[Cf. O. IX.,  
r. 2.]  
Substituted  
service.

**PERSONAL SERVICE OF WRIT.**—Is effected, by delivering a copy of the writ to the defendant, and at the same time showing him the original, if demanded: *Goggs v. Lord Huntingtower*, 12 M. & W. 563; *Poole v. Gould*, 1 H. & N. 99; *Hawthorn v. Harris*, 23 W. R. 214; *Phillipson v. Emanuel*, 56 L. T. 858. Service may be effected at any time, except that service on Sunday is wholly void: *Mackreth v. Nicholson*, 19 Ves. 367; *Taylor v. Phillips*, 3 East, 155. See Dan. Pr., pp. 333, 334; Chitt. Arch., pp. 232—234.

**SUBSTITUTED, OR OTHER SERVICE.**—There are three modes in which service may be ordered, where “prompt personal service” cannot be effected:—

- (i.) By substituted service on some agent of the defendant;
- (ii.) By leaving a copy of the writ at defendant's residence or place of business, and advertising;
- (iii.) By substitution of notice to the defendant for service upon him.

For the principle on which substituted service is allowed, see *Hope v. Hope*, 4 De G., M. & G. 328; *Wolverhampton Co. v. Bond*, 29 W. R. 599.



**Order IX.**  
**rr. 2—4.**

*Where personal service could not have been in any case effected.*—In such case no order for substituted service can be obtained: *Sloman v. Governor of New Zealand*, 1 C. P. D. 563; *Stewart v. Bank of England*, W. N. (1876), 263 (substituted service on ambassador of a foreign sovereign disallowed); *Hillyard v. Smyth*, 36 W. R. 7 (cited under O. XI., r. 1 (e), *post*, p. 152); *Field v. Bennett*, 56 L. J., Q. B. 89.

*Abscinding defendant.*—See *Cook v. Dey*, 2 Ch. D. 218; *Crane v. Jullion*, *ibid.*, 220; *Wolverhampton Co. v. Bond* (*ubi sup.*); *Coulburn v. Carshaw*, 32 W. R. 33; *Mellows v. Bannister*, 31 W. R. 238.

*Service on agent.*—See *Morgan*, p. 317; *Dan. Pr.*, p. 337, and cases there collected.

*Service at defendant's house, and advertising.*—See *Cook v. Dey* (*ubi sup.*); *Capes v. Brewer*, 24 W. R. 40; *Bank of Whitehaven v. Thompson*, W. N. (1877), 45.

*Substitution of notice for service.*—See *Capes v. Brewer*, 24 W. R. 40; *Rafael v. Ongley*, 34 L. T. 124; *Whitley v. Honeywell*, 24 W. R. 851; *Hartley v. Dilke*, 35 L. T. 706.

*Where defendant sued in name of a firm.*—Substituted service allowed, if no person found in charge of the business: *Shillito v. Child & Co.*, W. N. (1883), 208.

*Effect of substituted service.*—If duly effected is equivalent for all purposes to personal service: per *Jessel, M. R.*, *Watt v. Barnett*, 3 Q. B. D. 363, at p. 366.

*Service of amended writ.*—Should be effected in the same manner as service of an original writ: *The Cassiopeia*, 4 P. D. 188.

*Application for order.*—Is made in Ch. Div., *ex parte*, by motion or summons (usually by summons). It must be supported by an affidavit stating the grounds of the application: see O. X., *post*, p. 151.

*Order for substituted service.*—In Ch. Div. must be made by the Judge in person; not by a Chief Clerk (O. LV., r. 15, *post*, p. 409); or District Registrar (O. XXXV., r. 6, *post*, p. 280). In Q. B. D. may be made by a Master (O. LIV., r. 12, *post*, p. 396). Whether in an action in Q. B. D. the order may be made by a District Registrar, *quære*: see O. XXXV., r. 6, *post*, p. 280.

*Service of order.*—The order must be served with the copy writ, and it must be stated in the order that it is to be served; care must be taken that the service is effected in strict conformity with the terms of the order: *Dan. Pr.*, p. 339. For form of order, see App. K, No. 21, *post*, p. 617; 2 *Seton*, p. 1622, No. 3. See as to service, where copy writ and order sent by post, *Practice Rules*, *post*, p. 698.

*Objection to order.*—Must be taken by application to set aside the order, and not pleaded as a defence to the action: *Preston v. Lamont*, 1 Ex. D. 361. See also, O. XII., r. 30, *post*, p. 161.

*Setting aside judgment.*—Where an order for substituted service has been made, and judgment has been signed, defendant may in a proper case, and on proper terms, be let in to defend: *Watt v. Barnett*, 3 Q. B. D. 363. See, too, *The Pommerania*, 4 P. D. 195, as to change of solicitors.

[See further, as to substituted service generally, *Dan. Pr.*, pp. 336—340; *Morgan*, pp. 316, 317; *Chitt. Arch.*, pp. 236—241. For forms of proceedings, see *Dan. Forms*, pp. 141—143; *Chitt. Forms*, pp. 87—93.]

## II. On particular Defendants.

**3. When husband and wife are both defendants to the action, they shall both be served unless the Court or a Judge shall otherwise order.**

This rule was introduced in 1883. Under the corresponding repealed rule, service on the husband was good service on the wife, unless otherwise ordered. As to actions by or against married women, see further O. XVI., r. 16, *post*, p. 179, and note thereto; and for summary of the material provisions of the Rules affecting them, see *Dan. Forms*, p. 60.

**4. When an infant is a defendant to the action, service on his father or guardian, or if none, then upon the person with whom the infant resides or under whose care he is, shall, unless the Court or a**

50.

Husband and wife.

[Cf. O. IX., r. 3.]

51.

Infant.

[O. IX., r. 4.]



Judge otherwise orders, be deemed good service on the infant; provided that the Court or Judge may order that service made or to be made on the infant shall be deemed good service.

Order IX.  
rr. 4—6.

As to proceedings by or against infants, see O. XVI., r. 16, *post*, p. 179, and notes thereto: and for summary of the material provisions of the Rules affecting them, see Dan. Forms, pp. 38, 39.

5. When a lunatic or person of unsound mind not so found by inquisition is a defendant to the action, service on the committee of the lunatic, or on the person with whom the person of unsound mind resides or under whose care he is, shall, unless the Court or a Judge otherwise orders, be deemed good service on such defendant.

52.  
Person of  
unsound mind.  
[O. IX., r. 5.]

As to proceedings by or against lunatics and persons of unsound mind, see O. XVI., r. 17, *post*, p. 182; and for summary of material provisions of the Rules affecting them, see Dan. Forms, p. 52.

*Lunatic—no committee appointed.*—Service directed upon the keeper of the asylum where defendant resided: *Than v. Smith*, 27 W. R. 617. The keeper of an asylum is liable to attachment if he hinders service: *Denison v. Hardings*, W. N. (1867), 17.

*Service on manager of lunatic's business.*—Service held to be bad: *Fore Street Co. v. Durrant*, 10 Q. B. D. 471.

*Default of appearance.*—See O. XIII., r. 1, *post*, p. 162; *Re Pepper*, 53 L. J., Ch. 1054.

### III. On Partners and other Bodies.

6. Where persons are sued as partners in the name of their firm, the writ shall be served either upon any one or more of the partners or at the principal place, within the jurisdiction, of the business of the partnership upon any person having at the time of service the control or management of the partnership business there; and subject to these Rules, such service shall be deemed good service upon the firm.

53.  
Partners.  
[Cf. O. IX.,  
r. 6.]

As to proceedings by or against partners, see O. XVI., r. 14, *post*, p. 178; Dan. Pr., pp. 78, 79, 161—163; Chitt. Arch., pp. 234, 1093; and for summary of the material provisions of the Rules affecting them, see Dan. Forms, p. 30.

*Effect of Rule.*—The rule is a modification of the former rule, which ran "Where partners are sued, &c.," and under which it was doubtful whether partners at the time of action brought, or partners at the time the cause of action accrued were intended: see *Ex parte Young*, 19 Ch. D. 124; *Davis v. Morris*, 10 Q. B. D. 436, at p. 444. A reference to O. XVI., r. 14, shows that partners at the time of the accrual of the cause of action are intended. If, however, "the co-partnership has been dissolved to the knowledge of the plaintiff before the commencement of the action," the writ must be served upon every person sought to be made liable.

**SHORT SUMMARY OF THE PRACTICE.**—The system adopted for giving effect to the power to partners to sue, and the liability to be sued in the firm name, is shortly as follows:—

Power to partners to sue and be sued in the name of the firm is given by O. XVI., r. 14 (*post*, p. 178).

If partners are suing in the name of the firm they must, on demand of the defendant, disclose the names of the partners (O. VII., r. 2, *ante*, p. 143).

Whether suing or being sued, they may be ordered by a Judge, on the application of any party to the action, to make a like disclosure (O. XVI., r. 14, *post*, p. 178).

**Order IX.**  
**rr. 6—8.**

If the firm is sued as such, service may be effected under Rule 6, in either of two ways:—

- i. Upon any one or more of the partners;
  - ii. At the principal place of business of the partnership, upon any person having the control or management of the business.
- The partners are to appear individually in their own names, but all subsequent proceedings still go on in the name of the firm (O. XII., r. 15, *post*, p. 159); and judgment must be against the firm: *Jackson v. Litchfield*, 8 Q. B. D. 474.

After judgment against the firm, execution may issue (O. XLII., r. 10, *post*, p. 341) against any property of the firm, or against any person admitted or adjudged to be a partner, or against any person served as a partner with the writ who has failed to appear. If the judgment creditor claims to be entitled to issue execution against any one else as a partner in the firm, he may apply for an order to that effect, and an issue may be directed to try the question.

See note to next rule, and note to O. XLII., r. 10, *post*, p. 341.

*Service on member of foreign firm.*—Service within the jurisdiction on one member of a firm carrying on business out of the jurisdiction and who were sued in their firm name, was held to be good service: *Follerfen v. Sibson*, 16 Q. B. D. 792.

*Service on agent.*—Writ against a Scotch firm, served upon an agent within the jurisdiction, the name of the firm being affixed to his offices. Held, that the offices of the agent were not a place of business of the firm for the purpose of serving the writ: *Baillie v. Goodwin*, 33 Ch. D. 604.

*Substituted service.*—See *Shillito v. Child*, W. N. (1883), 208, cited *supra*, under Rule 2.

54.  
Person doing  
business under  
firm.  
[O. IX. r. 6a.]

**7.** Where one person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the firm name, the writ may be served at the principal place within the jurisdiction of the business so carried on upon any person having at the time of service the control or management of the business there; and such service, if sufficient in other respects, shall be deemed good service on the person so sued.

*Effect of Rule.*—It may well happen that a business is carried on under a firm which, on the face of it, indicates several partners, whereas in fact the business is that of a single individual. This difficulty is dealt with by O. XVI., r. 15, *post*, p. 179, which enacts that a person so carrying on business may be sued in the firm name. The above Rule 7, provides for service of the writ. O. XII., r. 16, *post*, p. 159, provides for the defendant's appearance.

*Lunatic.*—This rule does not apply to the case of a business carried on on behalf of a single person in a firm name, where that person is a lunatic: *Fore Street Co. v. Durrant*, 10 Q. B. D. 471. The writ in such case must be served in manner provided by Rule 5, *supra*, and the practice provided by O. XIII., r. 1 (*post*, p. 162), must, in default of appearance, be followed.

*Person resident abroad.*—A person residing abroad, but carrying on business in this country under a firm apparently consisting of more than one person, may be sued in this country, and the writ served at his place of business in this country, under this rule: *O'Neil v. Clason*, 46 L. J., Q. B. 191.

*Appearance by one partner only.*—As to execution in such case against other partners, see *Munster v. Cox*, 10 App. Cas. 680, and O. XLII., r. 10, *post*, p. 341.

55.  
Service on cor-  
porations and  
other bodies.  
[Cf. O. IX.  
r. 7.]

**8.** In the absence of any statutory provision regulating service of process, every writ of summons issued against a corporation aggregate may be served on the mayor or other head officer, or on the town clerk, clerk, treasurer, or secretary of such corporation; and every writ of summons issued against the inhabitants of a hundred



or other like district may be served on the high constables thereof, or any one of them, or, where there is no high constable, on any other acting chief officer of police of the county in which such hundred or district is situate; and every writ of summons issued against the inhabitants of any county of any city or town, or the inhabitants of any franchise, liberty, city, town, or place, not being a part of a hundred or other like district, on some peace officer thereof: and where by any statute provision is made for service of any writ of summons, bill, petition, summons, or other process upon any corporation, or upon any society or fellowship, or any body or number of persons, whether corporate or unincorporate, every writ of summons may be served in the manner so provided.

*Effect of Rule.*—This rule incorporates with the provisions of the corresponding repealed rule the provisions of s. 16 of the C. L. P. Act, 1852 (as modified by the 32 & 33 Vict. c. 47, s. 5, as to high constables). The word “summons” has also been added in line 14, for the sake of clearly applying s. 62 of the Companies Act, 1862, and thus providing that a writ of summons may be served on a joint stock company in the manner pointed out in that section: see *infra*.

*Service on foreign corporation.*—A foreign corporation having a place of business and trading in England, may be served in the manner pointed out in this rule, the officer in England being for this purpose a head officer: *Newby v. Van Oppen*, L. R., 7 Q. B. 293; *Palmer v. Gould's Manufacturing Co.*, W. N. (1884), 63; see also per Lord St. Leonards in *The Carron Iron Co. v. MacLaren*, 5 H. L. C. 416, at p. 459. Service of a writ upon the manager of the London agency of a bank, established by an “ordinance” of Hong Kong, and having its head office there, held to be good service, the agency being in fact a bank with the usual offices, manager and staff: *Lhoneux & Co. v. Hong Kong Bank Co.*, 33 Ch. D. 446. But service on a mere booking clerk on a Scotch railway company at a station on an English railway over which they had running powers was held insufficient in *Mackereith v. Glasgow Ry. Co.*, L. R., 8 Ex. 149. In *Nutter & Co. v. Messageries Maritimes*, 54 L. J., Q. B. 527, service on the London agent of a foreign firm was set aside. Where a company had their registered office in Scotland and a branch factory in Yorkshire, service upon the managing director in Yorkshire was held to be bad: *Wood v. Anderston Foundry Co.*, 36 W. R. 918.

A colonial government is not a corporation within the meaning of this rule: *Sloan v. Governor of New Zealand*, 1 C. P. D. 563; nor is a foreign government: *Strousberg v. Republic of Costa Rica*, 29 W. R. 125.

*Statutory provisions.*—By the Companies Act, 1862 (25 & 26 Vict. c. 89), s. 62, “Any summons, notice, order, or other document required to be served upon the company may be served by leaving the same, or sending it through the post in a prepaid letter addressed to the company at their registered office.” Since this rule came into operation, therefore, it seems clear that a writ of summons can be served on a company through the post: *White v. Land & Water Co.*, W. N. (1883), 174.

Similar provisions are contained in the Companies Clauses Act, 1845 (8 & 9 Vict. c. 16), s. 135, as to which see *Laurenson v. Dublin Ry.*, 37 L. T. 32; the Lands Clauses Act, 1845 (8 Vict. c. 18), s. 134, with respect to service upon promoters; and the Railways Clauses Act, 1845 (8 Vict. c. 20), s. 138, as to railway companies; except that in all these cases writs are specially mentioned.

By 7 Will. IV. & 1 Vict. c. 73, s. 26, service upon a company chartered under that Act may be made upon the clerk of the company, or by leaving the writ at the head office, or, if the clerk shall not be known or found, on any agent or officer employed by the company, or by leaving the writ at the usual place of abode of such agent or officer.

#### IV. In Particular Actions.

9. Service of a writ of summons in an action to recover land 56.  
may, in case of vacant possession, when it cannot otherwise be Service in



**Order IX.  
rr. 9—15.**

action to  
recover land.  
[O. IX. r. 3.]

57.

Undertaking  
to appear in  
Admiralty  
action.

58.

Who may  
serve warrant  
in Admiralty  
action.  
[O. IX. r. 9a.]

59.

Mode of service  
of writ or  
warrant in  
Admiralty  
action.  
[Cf. O. IX.  
r. 10a.]

60.

Service on  
cargo.  
[Cf. O. IX.  
r. 11.]

61.

Service on  
custodian of  
cargo.  
[Cf. O. IX.  
r. 12.]

62.

Indorsement  
of service.  
[Cf. O. IX.  
r. 13.]

effected, be made by posting a copy of the writ upon the door of the dwelling-house or other conspicuous part of the property.

*Effect of Rule.*—The corresponding repealed rule was taken from s. 170 of the C. L. P. Act, 1852. Except in the case of vacant possession, service in ejectment is the same as in other actions.

*Action to recover land.*—See O. XVIII., r. 2, *post*, p. 199.

*Vacant possession.*—See *Isaacs v. Diamond*, W. N. (1880), 75.

**10.** In Admiralty actions *in rem* no service of writ or warrant shall be required where the solicitor of the defendant agrees to accept service and to put in bail, or to pay money into Court in lieu of bail.

This rule was introduced in 1883. It supplies the omission in Rule 1 to deal with actions *in rem*.

*Default by solicitor.*—See O. XII., r. 18, *post*, p. 160.

*Caveats.*—See O. XXIX., rr. 11, 12, *post*, p. 248.

**11.** In Admiralty actions *in rem* the warrant of arrest shall be served by the Marshal or his substitutes, whether the property to be arrested be situate within the Port of London or elsewhere within the jurisdiction of the Court, and the solicitor issuing the warrant shall, within six days from the service thereof, file the same in the Admiralty Registry.

*Service of warrant of arrest.*—See *The Palomares*, 10 P. D. 36.

*Filing documents in registry.*—See O. LXVI., rr. 8, 9, *post*, p. 506.

**12.** In Admiralty actions *in rem* service of a writ of summons or warrant against ship, freight, or cargo on board, is to be effected by nailing or affixing the original writ or warrant for a short time on the mainmast, or on the single mast of the vessel, and, on taking off the process, leaving a true copy of it nailed or fixed in its place.

The addition of the word “warrant” supplies an omission in the corresponding repealed rule.

*Service by solicitor or his clerk.*—This is a valid service: *The Solis*, 10 P. D. 62.

*Notice of warrant.*—A ship may be arrested by telegraphing issue of warrant: *The Seraglio*, 10 P. D. 120.

**13.** If the cargo has been landed or transhipped, service of the writ of summons or warrant to arrest the cargo and freight shall be effected by placing the writ or warrant for a short time on the cargo, and, on taking off the process, by leaving a true copy upon it.

See note to last rule as to warrant.

**14.** If the cargo be in the custody of a person who will not permit access to it, service of the writ or warrant may be made upon the custodian.

See note to rule 12.

## V. Generally.

**15.** The person serving a writ of summons shall, within *three days* at most after such service, indorse on the writ the day of the month and week of the service thereof, otherwise the plaintiff shall not be at liberty, in case of non-appearance, to proceed by default; and every affidavit of service of such writ shall mention the day on which such indorsement was made. This Rule shall apply to substituted as well as other service.

*Effect of Rule.*—The corresponding repealed rule was founded on s. 15 of the C. L. P. Act, 1852, which, however, did not apply in cases of substituted service: *Dymond v. Croft*, 3 Ch. D. 512.

*Affidavit of service.*—For form of such affidavit, see Dan. Forms, p. 166; Chitt. Forms, p. 104; and for the indorsement, see forms of writs in App. A, Part I., *post*, p. 519.

*Amended writ.*—Must be served and indorsed in the same manner as an original writ, unless circumstances have taken place in the meantime to render this impossible: *The Cassiopeia*, 4 P. D. 188.

*Time for making indorsement.*—See *Hastings v. Hurley*, 16 Ch. D. 734; *Sproat v. Peckett*, 48 L. T. 755; *Shepherd v. Silcock*, W. N. (1886), 84, as to extension of time after the three days have elapsed.

*Where notice by advertisement substituted for service.*—In such case the indorsement is not required: *Davies v. Lound*, W. N. (1885), 54.

*Notice of writ.*—Where notice of the writ is served under O. XI., r. 6, *post*, p. 156, the indorsement is not required: *Re Livesey*, 47 L. T. 328.

Order IX.  
r. 15.

## ORDER X.

### SUBSTITUTED SERVICE.

Every application to the Court or a Judge for an order for substituted or other service, or for the substitution of notice for service, shall be supported by an affidavit setting forth the grounds upon which the application is made.

*Substituted service generally.*—See O. IX., r. 2, *ante*, p. 145; O. LXVII., r. 6, *post*, p. 507.

*Affidavit.*—For form of affidavit, see Dan. Forms, p. 142; Chitt. Forms, p. 87.

*Rule in Q. B. D.*—The ordinary rule acted on by the Masters seems to be to allow substituted service on an affidavit showing three ineffectual calls at the defendant's house, two of which were made by appointment.

Order X.

63.  
Substituted  
service.  
Affidavit.  
[O. X.]

## ORDER XI.

### SERVICE OUT OF THE JURISDICTION.

1. Service out of the jurisdiction of a writ of summons or notice of a writ of summons may be allowed by the Court or a Judge whenever—

(a) The whole subject-matter of the action is land situate within the jurisdiction (with or without rents or profits); or

This sub-rule differs from the repealed rule, inasmuch as it is confined to land, while the repealed rule applied also to "stock and other property."

(b) Any act, deed, will, contract, obligation, or liability affecting land or hereditaments situate within the jurisdiction, is sought to be construed, rectified, set aside, or enforced in the action; or

This sub-rule differs from the corresponding portion of the repealed rule by being confined to land.

*Liability affecting land.*—A statement made out of the jurisdiction amounting to slander of title to property within it, is not an act affecting the property within the meaning of this rule: see *Casey v. Arnot*, 2 C. P. D. 24, decided on the repealed rule.

An action for rent of land in England against defendants resident in Scotland was held by Q. B. D. not to be within this sub-rule, but to be within sub-rule (c), *infra*, and an order giving leave to serve defendants was set aside. The C. A. affirmed the decision on the ground that plaintiff had not shown that defendants were assignees of the lease: *Agnew v. Usher*, 14 Q. B. D. 78.

Order XI.  
r. 1.

64.  
Service out of  
jurisdiction :  
in what cases.  
[Cf. O. XI.  
rr. 1, 1a.]  
Land.  
Obligations  
relating to  
land.



**Order XI.  
r. 1, (b)—(f).**Resident or  
domiciled  
defendant.

A defendant ordinarily resident in Scotland let a farm in England to plaintiff. It was held, that an action brought to recover compensation for tenant right was an action to enforce "a contract, obligation, or liability affecting land within the jurisdiction," and that there was jurisdiction to allow service on defendant out of the jurisdiction: *Kaye v. Sutherland*, 20 Q. B. D. 147.

(c) Any relief is sought against any person domiciled or ordinarily resident within the jurisdiction; or

*Company with registered office in Scotland, and branches in England.*—Such a company is not "domiciled or ordinarily resident within the jurisdiction": *Jones v. Scottish Accident Insurance Co.*, 17 Q. B. D. 421.

*Administration action.*—See *Harvey v. Dougherty*, 56 L. T. 322, cited under sub-rule (g), *infra*.

Administra-  
tion.

(d) The action is for the administration of the personal estate of any deceased person, who at the time of his death was domiciled within the jurisdiction, or for the execution (as to property situate within the jurisdiction) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of England; or

This sub-rule was introduced in 1883.

Breach of  
contract.

(e) The action is founded on any breach or alleged breach within the jurisdiction of any contract wherever made, which, according to the terms thereof, ought to be performed within the jurisdiction, unless the defendant is domiciled or ordinarily resident in Scotland or Ireland; or

*Breach within the jurisdiction.*—An order made limiting the right of the plaintiff to recover the price of goods in respect of which it might appear at the trial that the writ could have been properly served out of the jurisdiction, held by C. A. to have been rightly made: *Thomas v. Duchess of Hamilton*, 17 Q. B. D. 592. There must be actual breach within the jurisdiction. The fact of mere damages being incurred within the jurisdiction is not sufficient: *Shearman v. Findlay*, 33 W. R. 122. Application refused where plaintiff, as a judgment creditor of proposed defendant, had obtained a charging order on certain shares belonging to the debtor, there being no breach for which the writ could be allowed to issue: *Moritz v. Stephan*, 36 W. R. 779.

*Defendant domiciled in Scotland or Ireland.*—There is no power in actions for breach of contract to allow service on a defendant domiciled or ordinarily resident in Scotland or Ireland: *Lenders v. Anderson*, 12 Q. B. D. 50. Leave refused to serve defendants thus domiciled, with a writ in an action for non-payment of rent in England: *Agnew v. Usher*, 14 Q. B. D. 78—affirmed C. A., 51 L. T. 752; or with a third-party notice, under O. XVI., r. 48: *Speller v. Bristol Steam Co.*, 13 Q. B. D. 96.

"To be performed within the jurisdiction."—It is not necessary that the contract should say in terms that it was to be performed within the jurisdiction. Where a term of the contract was delivery to a transferee of a deed of transfer, which in the case of a transferee resident within the jurisdiction could only be done within the jurisdiction, it was held that the contract was one which "ought to be performed within the jurisdiction:" *Reynolds v. Coleman*, 36 Ch. D. 453. So if the contract be for payment within the jurisdiction: *Robey v. Snacffell Mining Co.*, 20 Q. B. D. 152.

See *Creswell v. Parker*, 11 Ch. D. 601, as to Scotch property vested by a marriage settlement in Scotch trustees, the *cestui que trust* living in England; also, *Harris v. Fleming*, 13 Ch. D. 208, decided on the repealed rule.

*Substituted service.*—Where effectual personal service cannot be made upon a defendant owing to the provisions of this rule, the Court will not allow substituted service: *Hillyard v. Smyth*, 36 W. R. 7. See, too, *Field v. Bennett*, 56 L. J., Q. B. 89.

Injunction.

(f) Any injunction is sought as to anything to be done within the jurisdiction, or any nuisance within the jurisdiction is



sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or

Order XI.  
r. 1, (f), (g).

*Cases on the rule.*—Where a ship was in port at Cardiff, but the charterparty had been entered into in Scotland, and both parties resided there, service out of the jurisdiction of a writ claiming an injunction to restrain a breach of the charterparty was not allowed: *Ex parte McPhail*, 12 Ch. D. 632, decided on the repealed rule.

Where libellous postcards were posted in Ireland and received in Middlesex, service out of the jurisdiction of a writ claiming an injunction was allowed: *Tozier v. Hawkins*, 15 Q. B. D. 680. See also *Lisbon, &c. Co. v. Heddle*, 52 L. T. 796. As to injunction to restrain the infringement of a patent, see *Speckhart v. Campbell & Co.*, W. N. (1884), 24. In this case the C. A. held that leave should not have been granted. See, too, *Marshall v. Marshall* (leave refused), 38 Ch. D. 330.

(g) Any person out of the jurisdiction is a necessary or proper Joinder of party to an action properly brought against some other parties.  
person duly served within the jurisdiction.

This sub-rule was introduced in 1883.

*Necessary or proper party.*—It is sufficient if a party is a "proper" party; he need not also be "necessary." *Sykes v. Schofield*, 28 Sol. J. 477. A charterparty made in London upon the instructions of an Austrian firm, to be performed abroad, was broken out of the jurisdiction by repudiation of the Austrian firm: service out of the jurisdiction on that firm was allowed under this sub-rule: *Massey v. Arcardi*, W. N. (1888), 149. The time for determining whether the party proposed to be served is a necessary and proper party, is when the writ is issued: *Massey v. Heynes*, 21 Q. B. D. 330.

*Some person duly served within the jurisdiction.*—It must be shown that there is within the jurisdiction a defendant against whom substantial relief is claimed, and also that the defendant within the jurisdiction has been previously duly served: *Yorkshire Tannery Co. v. Eglinton Chemical Co.*, 54 L. J., Ch. 81. See also, *Lightowler v. Lightowler*, W. N. (1884), 8, and *S.S. Thanemore v. Thompson*, 52 L. T. 552. If a foreigner resident abroad would, if he had been resident in England, have been properly joined as a defendant to an action against a person resident in England, he can be served out of the jurisdiction as a defendant to such an action, even though relief could be obtained against him only in the alternative of its being decided at the trial that the other defendant was not liable to the plaintiff: *Massey v. Heynes*, 21 Q. B. D. 330. See also *Seymour v. Seymour*, W. N. (1888) 17.

*Action relating to real estate abroad.*—Leave given to serve a British subject resident in Trinidad, the defendants in England having been served: *Jemney v. Mackintosh*, 33 Ch. D. 595.

*Administration action.*—Where a testator died domiciled in Jersey, leaving English assets, and an action was brought for administration of the estate by infant beneficiaries resident in England, leave was given to serve the writ on the executors resident in Jersey, and an application to set aside the order was refused: *Re Lane*, 55 L. T. 149. Where a testatrix domiciled in Ireland appointed two Irish and one English executor, and an action for administration was brought against such executors, it was held that it was matter of discretion for the Judge, and that, the action having been properly brought against a person within the jurisdiction, the case fell within sub-rule (c), and a motion to discharge the order for service was dismissed: *Harvey v. Dougherty*, 56 L. T. 322.

*Third-party notice.*—Is not within this sub-rule: *Speller v. Bristol Steam Co.*, 13 Q. B. D. 96, per Huddleston, B.

#### AS TO SERVICE OUT OF THE JURISDICTION GENERALLY.

*Effect of the present Rule.*—See particularly *Re Eager*, 22 Ch. D. 86; *Re Busfield*, 32 Ch. D. 123; *Re Anglo-African Steamship Co.*, 32 Ch. D. 348.

The rule is exhaustive, and supersedes the former practice. No leave to serve a defendant out of the jurisdiction will be given except in the cases specified in this rule: *Re Eager*, 22 Ch. D. 86. The power to order service out of the jurisdiction which was conferred by the Acts 2 Will. IV. c. 33; 4 & 5 Will. IV. c. 82, is not still subsisting, notwithstanding the saving clause in the Statute Law

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r. 1.

Revision Act, 1883 (46 & 47 Vict. c. 49), s. 5, sub-s. (b). "Where, as here, we have a code of rules providing for service out of the jurisdiction, I think it would be wrong to hold that by virtue of this saving clause a further jurisdiction exists under a statute which has been repealed." Per Cotton, L. J., *Re Busfield*, 32 Ch. D. 123, at p. 132.

*Discretion of Court.*—The power of the Court is discretionary, to be used with care, and in exercising the discretion, evidence as to merits will be considered: *Société Générale de Paris v. Dreyfus*, 29 Ch. D. 239. In considering whether foreign service of a writ should be allowed, it is the duty of the Court to go into the facts of the case before it, not for the purpose of deciding which facts are right, but to see if there is any probable cause of action: S. C. (C. A.), 37 Ch. D. 215.

*Extent of jurisdiction.*—The words "within the jurisdiction" mean the territorial jurisdiction. Therefore an Admiralty writ cannot issue for service abroad in respect of a wrong done on the high seas: *Re Smith*, 1 P. D. 300; *The Vivar*, 2 P. D. 29. Nor can a writ issue for such service in respect of a wrong below low-water mark, but within three miles of shore: *Harris v. Owners of Franconia*, 2 C. P. D. 173.

*Foreign Corporations.*—Serious difficulties arose in the Common Law Courts with respect to proceedings against foreign corporations situated abroad. It was held that s. 19 of the C. L. P. Act, 1852, which provided for service upon persons residing abroad, not being British subjects, did not apply to corporations abroad: *Ingate v. Austrian Lloyd's*, 4 C. B., N. S. 704. See also *Armstrong v. Die Elbinger Actien-Gesellschaft*, 23 W. R. 94. But these decisions turned entirely upon the construction of the particular Act in question; and there is nothing in the words of the present rules to limit their operation to the case of natural persons. A foreign corporation may, therefore, now be served abroad: *Scott v. Royal Wax Candle Co.*, 1 Q. B. D. 404. See, too, *Westman v. Aktielaget Snickarefabrik*, 1 Ex. D. 237; but a foreign sovereign or State cannot be so served: *Strousberg v. Republic of Costa Rica*, 29 W. R. 125.

## WHAT PROCEEDINGS CAN BE SERVED OUT OF THE JURISDICTION.

*Interpleader proceedings.*—See *Credits Gerundese v. Van Weede*, 12 Q. B. D. 171; *Van der Kan v. Ashworth*, W. N. (1884), 58, in which cases leave to serve was given. [*Sed quære?* Both cases were before *Re Busfield* (*ubi sup.*), and it must be considered to be doubtful whether the jurisdiction in such a case exists.]

*Originating summons.*—Cannot be served out of the jurisdiction: *Re Busfield*, 32 Ch. D. 123.

*Petition.*—Where some of the persons entitled to funds in Court were residing out of the jurisdiction, and it was impossible to deal with such funds unless a petition, which had been presented asking for payment out of a portion thereof, was served on such persons, the Court gave liberty to serve the petition together with a copy of the order on them: *Colls v. Robins*, 55 L. T. 479; and see *Re Ruddiman's Trusts*, 31 Sol. J. 271; *Re Gordon's Settlement Trusts*, W. N. (1887), 192; *Re Jellard*, W. N. (1888), 184.

*Summons.*—Leave has been refused to serve a summons for a receiver (*Weldon v. Gounod*, 15 Q. B. D. 622), and for taxation of costs (*Ex parte Brandon*, 34 W. R. 352), upon a foreigner out of the jurisdiction.

*Third-party notices.*—Under the repealed rule it was held that a third-party notice could be served out of the jurisdiction: *Swansea Shipping Co. v. Duncan*, 1 Q. B. D. 644. But under the present rule it has been decided that such a notice cannot be served on a person domiciled or ordinarily resident in Scotland or Ireland: *Speller v. Bristol Steam Co.*, 13 Q. B. D. 96. Having regard to that case, and to *Re Busfield* (*ubi sup.*), it seems open to doubt whether service out of the jurisdiction of a third-party notice would be allowed.

*Proceedings under the Companies Acts.*—The Court has no jurisdiction to give liberty to serve an order made in the winding-up of a company for the payment of calls upon persons resident out of the jurisdiction: *Anglo-African Steamship Co.*, 32 Ch. D. 348; but *secus*, as to mere notices, *e.g.*, notice of an appointment to settle a list of contributories: *Re Nathan, Newman & Co.*, 35 Ch. D. 1; or notice of an application for payment of a



dividend to one of two payees: *Re Liebig's Cocoa and Chocolate Works*, W. N. (1888), 120. See also *Re British Imperial Corporation*, 5 Ch. D. 749.

Order XI.  
rr. 1—4.

**PRACTICE UNDER THE RULE.**

*Application: how made.*—See as to this in the Ch. Div., note to O. II., r. 4, *ante*, p. 130; Dan. Pr., p. 341. As to practice in Q. B. D., see Chitt. Arch., p. 246.

*Affidavit in support.*—See r. 4, *infra*, and note thereto.

*Order.*—Can be made only by a Judge—not by a Chief Clerk (O. LV., r. 15, *post*, p. 409): nor a District Registrar (O. XXXV., r. 6, *post*, p. 280); nor by a Master (O. LIV., r. 12 (*b*), *post*, p. 396). The order for service may include an order for interim and *ex parte* injunction: *Young v. Brassey*, 1 Ch. D. 277.

*Setting aside order.*—See Dan. Pr., pp. 343—345; Chitt. Arch., p. 249; O. XII., r. 30, *post*, p. 161. An objection that the cause of action is not such that a writ ought to issue out of the jurisdiction cannot be pleaded. It is only ground for an application to set aside the writ of a Judge whose decision may be appealed from: *Preston v. Lamont*, 1 Ex. D. 361. An application to discharge the order giving leave to serve out of the jurisdiction should be made promptly: *Reynolds v. Coleman*, 36 Ch. D. 453. For forms of summons, see Dan. Forms, pp. 151—153.

*Submission to jurisdiction.*—An application to set aside the order should be made before appearance, for appearance is a submission to the jurisdiction: *Re Orr-Ewing*, 22 Ch. D. 456; *Tozier v. Hawkins*, 15 Q. B. D. 680.

2. Where leave is asked from the Court or a Judge to serve a writ, under the last preceding rule, in Scotland or in Ireland, if it shall appear to the Court or Judge that there may be a concurrent remedy in Scotland or Ireland (as the case may be) the Court or Judge shall have regard to the comparative cost and convenience of proceeding in England, or in the place of residence of the defendant, or person sought to be served, and particularly in cases of small demands, to the powers and jurisdiction, under the statutes establishing or regulating them, of the Sheriffs' Courts, or Small Debts Courts in Scotland, and of the Civil Bill Courts in Ireland, respectively.

65.  
Scotland and  
Ireland.  
[Cf. O. XI.  
r. 1a.]

This rule is a modification of Rule 1a of 1876, which applied only to actions on contract. See on that rule *Fowler v. Barstow*, 20 Ch. D. 240, and also Rule 4 and note thereto. See, too, *Seymour v. Seymour*, W. N. (1888), 17. Where the proposed defendant was resident in Scotland, and the contemplated action was for an injunction against him, held, that, as an injunction in England could only be enforced against the agents of the defendant, and not against the defendant himself, leave ought not to be given, the matter being one which was better left to the Scotch Courts: *Marshall v. Marshall*, 38 Ch. D. 330.

3. In Probate actions service of a writ of summons or notice of a writ of summons may by leave of the Court or a Judge be allowed out of the jurisdiction.

66.  
Probate  
action.  
[O. XI. r. 2.]

4. Every application for leave to serve such writ or notice on a defendant out of the jurisdiction shall be supported by affidavit, or other evidence, stating that in the belief of the deponent the plaintiff has a good cause of action, and showing in what place or country such defendant is or probably may be found, and whether such defendant is a British subject or not, and the grounds upon which the application is made; and no such leave shall be granted unless it shall be made sufficiently to appear to the Court or Judge that the case is a proper one for service out of the jurisdiction under this Order.

67.  
Affidavit to  
obtain leave.  
[Cf. O. XI.  
r. 3.]



**Order XI.  
rr. 4—7.**

**AFFIDAVIT.**—For forms of affidavit giving specimens of cases within the several sub-rules of r. 1, *supra*, see Dan. Forms, pp. 144—147. See, also, Chitt. Forms, p. 80.

*By whom to be made.*—It may be made by the solicitor of the plaintiff, or by any other person who can depose to the facts: *Great Australian Co. v. Martin*, 5 Ch. D. 1.

*Contents.*—The affidavit must state the cause of action relied on, and that it arose within the jurisdiction: *Great Australian Co. v. Martin* (*ubi sup.*). Where an order for service out of the jurisdiction had been obtained upon an affidavit containing mis-statements of facts, the order was discharged, for when an *ex parte* application is made to the Court, the person making it must observe *uberrima fides*: *Republic of Peru v. Dreyfus*, 55 L. T. 802. It is not sufficient to prove damages merely incurred within the jurisdiction; actual breach within the jurisdiction must be proved: *Shearman v. Findlay*, 32 W. R. 122.

*British subject.*—Where the defendant is resident in Scotland or Ireland, the omission to state that he is a British subject is immaterial: *Fowler v. Barstow*, 20 Ch. D. 240.

*Defendant resident in Scotland or Ireland.*—The affidavit in such case should show in what respect it would be cheaper and more convenient to try the case in England: *Woods v. McInnes*, 4 C. P. D. 67; *Tottenham v. Barry*, 12 Ch. D. 797. Where the amount at stake is very large it seems unnecessary for the affidavit to notice the provisions of r. 2, as to the existence of a local Court of limited jurisdiction: *Tottenham v. Barry*, 12 Ch. D. 797, at p. 805.

*Case proper for service.*—Affidavits on the part of the defendant are admissible to show that the cause of action did not arise within the jurisdiction: *Fowler v. Barstow* (*ubi sup.*); and see as to discretion of the Court, *Great Australian Co. v. Martin*, 5 Ch. D. 1, at p. 11; *Société Générale de Paris v. Dreyfus*, 29 Ch. D. 239; 37 Ch. D. 215.

68.  
Time for  
appearance.  
[O. XI. r. 4.]

5. Any order giving leave to effect such service or give such notice shall limit a time after such service or notice within which such defendant is to enter an appearance, such time to depend on the place or country where or within which the writ is to be served or the notice given.

See a form of order in App. K, No. 20, *post*, p. 617.

*Time for appearance.*—The time allowed for entering appearance after service out of the jurisdiction, is, as a general rule, double the ordinary time it takes to reach the place where the defendant is, or probably may be found. Cf. Registrar's notice, 15th July, 1886. For new table of times for entering appearance, see *post*, p. 661.

As to time for appearance to summons in a liquidation, see *Re British Imperial Corporation*, 5 Ch. D. 749.

69.  
When notice  
to be substituted  
for writ.

6. When the defendant is neither a British subject, nor in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

*Effect of rule.*—This rule was introduced in 1883. It affirms previous decisions: see *Padley v. Camphausen*, 10 Ch. D. 550. For the reason, see *Beddington v. Beddington*, 1 P. D. 426.

*Rule imperative.*—If a writ, and not notice of it, is served upon a foreigner not resident in British dominions the service is a nullity, and not a mere irregularity capable of being cured under O. LXX., r. 2 (see *post*, p. 513): *Hewetson v. Fabre*, 21 Q. B. D. 6.

70.  
Service of  
notice in lieu  
of writ.  
[O. XI. r. 5.]

7. Notice in lieu of service shall be given in the manner in which writs of summons are served.

See form of notice, App. A, Part I., Nos. 9, 10, *post*, p. 526.

*Proof of service of notice.*—See *Bustros v. Bustros*, 14 Ch. D. 849.

*Service of writ.*—See O. IX., r. 2, *ante*, p. 145.

*Affidavit of service.*—See O. XIII., r. 2, *post*, p. 163.

ORDER XII.

APPEARANCE.

Order XII.  
rr. 1—7.

1. Except in the cases otherwise provided for by these rules a defendant shall enter his appearance in London.

*Appearance generally.*—(1.) In Ch. Div., see Dan. Pr., pp. 346—354.  
(2.) In Q. B. D., see Chit. Arch., pp. 251—258.

APPEARANCE IN CASE OF PARTICULAR DEFENDANTS.

1. *Partners.*—Partners sued in name of their firm must appear individually in their own names; but all subsequent proceedings will continue in the name of the firm: O. XII., r. 15.

A person carrying on business in the name of a firm must appear in his own name; but all subsequent proceedings will continue in the name of the firm: O. XII., r. 16.

2. *Infants.*—Infants appear by guardian *ad litem*: O. XVI., r. 18.

3. *In actions for recovery of land.*—See O. XII., rr. 25—29.

4. *Appearance by third party.*—See O. XVI., r. 49.

5. *Appearance by party served with order to carry on proceedings.*—See O. XVII., r. 5.

6. *Appearance by party served with notice of judgment or order.*—See O. XVI., r. 41.

7. *Appearance to counterclaim.*—See O. XII., r. 18.

See Dan. Forms, p. 155.

2. Appearances entered in London shall be entered in the Central Office.

3. In Probate and Admiralty actions notice of appearances entered shall forthwith be given by the Central Office to the Probate and Admiralty Registries respectively.

As to the general effect of the rules upon the place of proceeding in actions, see note to O. V., r. 2, *ante*, p. 136.

*Appearance under protest.*—This practice in Admiralty actions is not probably abolished: *The Vivar*, 2 P. D. 29, decided on the repealed rules, but see rule 30 of this Order for an alternative procedure.

4. If any defendant to a writ issued in a District Registry resides or carries on business within the district, he shall appear in the District Registry.

See O. V., r. 3, *ante*, p. 137.

5. If any defendant neither resides nor carries on business in the district, he may appear either in the District Registry or at the Central Office.

*Appearance in Admiralty action.*—As to forms in this case, see *The General Birch*, 24 W. R. 24.

6. If a sole defendant appears, or all the defendants appear in the District Registry, or if all the defendants who appear appear in the District Registry and the others make default in appearance, then, subject to the power of removal in Order XXXV., Rules 13 to 16 provided, the action shall proceed in the District Registry.

*Removal.*—See note to O. V., r. 2, *ante*, p. 136; S. C. Jud. Act, 1873, s. 65, *ante*, p. 49; and O. XXXV., rr. 13—16, *post*, pp. 282, 283.

7. If the defendant appears, or any of the defendants appear, in London the action shall proceed in London; provided that if the Court or a Judge shall be satisfied that the defendant appearing in London is a merely formal defendant, or has no substantial cause to

71.  
Appearance  
when in  
London.  
[O. XII. r. 1.]

72.  
Entry in  
Central Office.  
[O. XII. r. 1a.]

73.  
Probate and  
Admiralty  
actions.  
[O. XII. r. 1a.]

74.  
Appearance:  
when in Dis-  
trict Registry.  
[O. XII. r. 2.]

75.  
Appearance:  
when in either  
place.  
[O. XII. r. 3.]

76.  
Effect of  
appearance  
in District  
Registry.  
[Cf. O. XII.  
r. 4.]

77.  
Effect of  
appearance in  
London.  
[O. XII. r. 5.]



**Order XII.  
rr. 7—12.**

interfere in the conduct of the action, such Court or Judge may order that the action may proceed in the District Registry, notwithstanding such appearance in London.

78.  
Mode of entry  
of appearance.  
[O. XII. r. 6b.]

8. A defendant shall enter his appearance to a writ of summons by delivering to the proper officer a memorandum in writing dated on the day of its delivery, and containing the name of the defendant's solicitor, or stating that the defendant defends in person. He shall at the *same time* deliver to the officer a duplicate of the memorandum, which the officer shall seal with the official seal, showing the date on which it is sealed, and then return it to the person entering the appearance, and the duplicate memorandum so sealed shall be a certificate that the appearance was entered on the day indicated by the seal.

For form of memorandum, see App. A, *post*, p. 529.

*Proper office.*—See O. LXXI., r. 1, *post*, p. 514.

79.  
Notice of  
appearance.  
[Cf. O. XII.  
r. 6b.]

9. A defendant shall, *on the day* on which he enters an appearance to a writ of summons, give notice of his appearance (Form No. 2 in Appendix A, Part II.) to the plaintiff's solicitor, or, if the plaintiff sues in person, to the plaintiff himself. The notice may be given either by notice in writing served in the ordinary way at the address for service (which, in the case of a writ issued out of a District Registry, must be the address for service within the district), or by prepaid letter directed to that address and posted on the day of entering appearance in due course of post, and shall in either case be accompanied by the sealed duplicate memorandum.

For the form of notice of appearance, see App. A, *post*, p. 530.

*Notice of appearance.*—The provisions with respect to giving notice of appearance should be strictly complied with, otherwise the plaintiff may proceed as in default of appearance: Dan. Pr., p. 349; *Smith v. Dobbin*, 3 Ex. D. 338.

80.  
Address for  
service of  
defendant's  
solicitor.  
[Cf. O. XII.  
r. 7.]

10. The solicitor of a defendant appearing by a solicitor shall state in such memorandum his place of business, and, if the appearance is entered in the Central Office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, and if the appearance is entered in a District Registry, a place, to be called his address for service, which shall be within the district, and where any such solicitor is only agent of another solicitor, he shall add to his own name or firm and place of business the name or firm and place of business of the principal solicitor.

*District.*—See S. C. Jud. Act, 1873, s. 60, *ante*, p. 48; and the Order in Council issued under that section, *post*, p. 799.

81.  
Address for  
service of  
defendant in  
person.  
[O. XII. r. 8.]

11. A defendant appearing in person shall state in such memorandum his address, and, if the appearance is entered in the Central Office, a place, to be called his address for service, which shall not be more than three miles from the principal entrance of the Central Hall at the Royal Courts of Justice, and if the appearance is entered in a District Registry, a place, to be called his address for service, which shall be within the district.

82.  
Defective  
memorandum.  
[O. XII. r. 9.]

12. If the memorandum does not contain such address, it shall not be received; and if any such address shall be illusory or ficti-



tious, the appearance may be set aside by the Court or a Judge, on the application of the plaintiff.

Order XII.  
rr. 12—17.

*Illusory address.*—If a defendant gives an address for service at which he is not to be found, and there is no person authorized to take in documents, such address is illusory, and the appearance will be set aside: *A. v. B.*, W. N. (1883), 174. In *E. v. C.*, 54 L. J., Ch. 308, the order setting aside the appearance as illusory was made *ex parte*.

13. The memorandum of appearance shall be in the Form No. 1 in Appendix A, Part II., with such variations as circumstances may require.

83.  
Form.  
[O. XII. r. 10.]

For this form, see *post*, p. 529.

14. Upon receipt of a memorandum of appearance, the officer shall forthwith enter the appearance in the Cause Book.

84.  
Entry of  
appearance in  
cause-book.  
[O. XII. r. 11.]

15. Where persons are sued as partners in the name of their firm, they shall appear individually in their own names; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

85.  
Appearance by  
partners.  
[O. XII. r. 12.]

*Service of writ on partners.*—See O. IX., r. 6, *ante*, p. 147.

*Proceedings by or against partners.*—See O. XVI., r. 14, *post*, p. 178.

*Appearance by one member of firm.*—Where a writ was issued against a firm, and served upon one member of it, who entered an appearance as “W. N., a partner of the firm of W., T. & Co.,” and there was no service upon or appearance by the other members, held, that leave to sign judgment against the firm for default of appearance could not be granted: *Adam v. Townend*, 14 Q. B. D. 103, following *Jackson v. Litchfield*, 8 Q. B. D. 474.

Where a firm was sued and only one partner appeared, and the plaintiff obtained judgment against “A. sued as A. & Co.,” it was held that he could not afterwards get his judgment amended so as to issue execution against B., another member of the firm: *Munster v. Cox*, 10 App. Cas. 680.

Where one partner made default in appearance, it was held that the other might put in a defence in the name of the firm: *Taylor v. Collier*, 51 L. J., Ch. 853.

*Service on member of a foreign firm.*—Where a member of a firm carrying on business abroad comes within the jurisdiction, and is served with an ordinary writ in the name of the firm, such service is good, and will enable the plaintiff to get judgment against the firm: *Pollexfen v. Sibson*, 16 Q. B. D. 792, cited also under O. IX., r. 6, *ante*, p. 148.

16. Where any person carrying on business in the name of a firm apparently consisting of more than one person shall be sued in the name of the firm, he shall appear in his own name; but all subsequent proceedings shall, nevertheless, continue in the name of the firm.

86.  
Appearance by  
person sued  
under firm.  
[O. XII.  
r. 12a.]

As to the general effect of the rules upon actions by and against partners, and against persons carrying on business under firms, apparently consisting of several persons, see notes to O. IX., rr. 6, 7, *ante*, pp. 147, 148.

17. If two or more defendants in the same action shall appear by the same solicitor and at the same time, the names of all the defendants so appearing shall be inserted in one memorandum.

87.  
Appearance by  
several.  
[O. XII. r. 13.]

This is identical with Rule 2 of R. G., H. T., 1853.

**Order XII.  
rr. 18—24.**

88.

Undertaking  
to appear, &c.[Cf. O. XII.  
r. 14.]

89.

Bail in Admi-  
ralty actions.

**18.** A solicitor not entering an appearance, or putting in bail, or paying money into Court in lieu of bail in an Admiralty action *in rem*, in pursuance of his written undertaking so to do, shall be liable to an attachment.

See O. IX., rr. 1 and 10, *ante*, pp. 145, 150, and O. XXIX., r. 12, *post*, p. 248, as to undertakings to put in bail.

**19.** In Admiralty actions *in rem*, bail may be taken before the Admiralty Registrar, or before any District Registrar, or Commissioner to administer Oaths, in the Supreme Court, and in every case the sureties shall justify.

For forms relating to bail in Admiralty actions, see Appendix A, Part II., *post*, pp. 532 *et seq.*

90.

Bail bond  
when filed.

**20.** A bail bond shall not, unless by consent, be filed until after the expiration of *twenty-four hours* from the time when a notice, containing the names and addresses of the sureties and of the Commissioner before whom the bail was taken, shall have been served upon the adverse solicitor, and a copy of the notice verified by affidavit shall be filed with the bail bond.

*Bail bond.*—For form, see *post*, p. 532. As to dispensing with delay in taking of bail, see O. LXIV., r. 10, *post*, p. 470. As to form of bail bond in action of restraint, see *The Robert Dickinson*, 10 P. D. 15. As to cancellation of the bond and release of the sureties in an action of restraint, see *The Vivienne*, 12 P. D. 185.

91.

Commissioners  
to take bail.

**21.** No Commissioner shall take bail on behalf of any person for whom he or any person in partnership with him is acting as solicitor or agent.

92.

Appearance at  
any time  
before judg-  
ment.[Cf. O. XII.  
r. 15.]

**22.** A defendant may appear at any time before judgment. If he appear at any time after the time limited by the writ for appearance, he shall not, unless the Court or a Judge shall otherwise order, be entitled to any further time for delivering his defence, or for any other purpose, than if he had appeared according to the writ.

The corresponding repealed Rule was in substance the same as s. 29 of the C. L. P. Act, 1852.

**TIME FOR APPEARANCE.**

(a) To an ordinary writ, is eight days. See forms of writs, *post*, pp. 519 *et seq.*

(b) To a writ served out of the jurisdiction. This will depend on the time limited by the order giving leave to serve, under O. XI., r. 5, *ante*, p. 156.

93.

Appearance by  
intervener in  
Probate action.  
[O. XII. r. 16.]

**23.** In Probate actions any person not named in the writ may intervene and appear in the action as heretofore, on filing an affidavit showing how he is interested in the estate of the deceased.

94.

Appearance by  
intervener in  
Admiralty  
action.  
[O. XII. r. 17.]

**24.** In an Admiralty action *in rem* any person not named in the writ may intervene and appear as heretofore, on filing an affidavit showing that he is interested in the *res* under arrest, or in the fund in the Registry.

**25.** Any person not named as a defendant in a writ of summons for the recovery of land may by leave of the Court or a Judge appear and defend, on filing an affidavit showing that he is in possession of the land either by himself or by his tenant.

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rr. 25—30.**

This and the three following rules are substantially the same as ss. 172, 173 and 174 of the C. L. P. Act, 1852, and Rule 113 of R. G., H. T., 153. For a case in which this rule was considered, see *Leader v. Hayes*, 54 L. T. 204.

By s. 209 of the C. L. P. Act, 1852, every tenant served with a writ in ejectment is bound to give notice thereof to his landlord, under a penalty of forfeiting three years' rack rent of the premises.

*Action for recovery of land.*—See *Gledhill v. Hunter*, 14 Ch. D. 492.

*Practice under the Rule.*—Application for leave to appear is made by *ex parte* summons: Dan. Pr., p. 352. For form of summons, see Dan. Forms, p. 160. For form of order, see 2 Seton, p. 1626, No. 2.

**26.** Any person appearing to defend an action for the recovery of land as landlord, in respect of property whereof he is in possession only by his tenant, shall state in his appearance that he appears as landlord.

95.  
Appearance by landlord in action for land.  
[O. XII. r. 18.]

**27.** Where a person not named as defendant in any writ of summons for the recovery of land has obtained leave of the Court or a Judge to appear and defend, he shall enter an appearance, according to the foregoing Rules of this Order, intituled in the action against the party named in the writ as defendant, and shall forthwith give notice of such appearance to the plaintiff's solicitor, or to the plaintiff if he sues in person, and shall in all subsequent proceedings be named as a party defendant to the action.

96.  
Form of appearance by landlord.  
[O. XII. r. 19.]

**28.** Any person appearing to a writ of summons for the recovery of land shall be at liberty to limit his defence to a part only of the property mentioned in the writ, describing that part with reasonable certainty in his memorandum of appearance, or in a notice intituled in the action and signed by him or his solicitor. Such notice shall be served within *four days* after appearance: and an appearance, where the defence is not limited as above-mentioned, shall be deemed an appearance to defend for the whole.

98.  
Limited appearance in action for land.  
Notice.  
[O. XII. r. 21.]

For the form of entry of appearance, see App. A, Part II., No. 4, *post*, p. 530.

**29.** The notice mentioned in the last preceding Rule shall be in the Form No. 3 in Appendix A, Part II., with such variations as circumstances may require.

99.  
Form of notice.  
[O. XII. r. 22.]

For this form, see *post*, p. 530.

**30.** A defendant before appearing shall be at liberty, without obtaining an order to enter or entering a conditional appearance, to serve notice of motion to set aside the service upon him of the writ or of notice of the writ, or to discharge the order authorizing such service.

100.  
Setting aside service.

This rule was introduced in 1883.

*Effect of appearance.*—Appearance to a writ is a "fresh step" taken within the meaning of O. LXX., r. 2 (*post*, p. 513), and a writ which is irregular to the



**Order XII.** knowledge of the defendant cannot be set aside on his application after appearance: *Mulckern v. Doerks*, 53 L. J., Q. B. 526.  
**r. 30.**

*Practice under the Rule.*—See Dan. Pr., pp. 343—345; Chitt. Arch., p. 241. For form of proceedings, see Dan. Forms, pp. 149—153. See, for instances of applications under this rule, *Lenders v. Anderson*, 12 Q. B. D. 50; *Call v. Oppenheim*, 1 Times L. R. 622; *Re Lane*, 55 L. T. 149; *Nelson v. Pastorino*, 49 L. T. 564.

**Order XIII.**  
**r. 1.**

## ORDER XIII.

### DEFAULT OF APPEARANCE.

101.  
 Infant or  
 insane person.  
 [Cf. O. XIII.  
 r. 1.]

1. Where no appearance has been entered to a writ of summons for a defendant who is an infant or a person of unsound mind not so found by inquisition, the plaintiff shall, before further proceeding with the action against the defendant, apply to the Court or a Judge for an order that some proper person be assigned guardian of such defendant, by whom he may appear and defend the action. But no such order shall be made unless it appears on the hearing of such application that the writ of summons was duly served, and that notice of such application was, after the expiration of the time allowed for appearance, and at least *six clear days* before the day in such notice named for hearing the application, served upon or left at the dwelling-house of the person with whom or under whose care such defendant was at the time of serving such writ of summons, and also (in the case of such defendant being an infant not residing with or under the care of his father or guardian) served upon or left at the dwelling-house of the father or guardian, if any, of such infant, unless the Court or Judge at the time of hearing such application shall dispense with such last-mentioned service.

*Service.*—As to service on infants and persons of unsound mind, see O. IX., rr. 4 and 5, *ante*, pp. 146, 147; *Fore Street Co. v. Durrant*, 10 Q. B. D. 471.

*Effect of Rule.*—It is obligatory. The repealed rule, which was founded on C. O. VII., r. 3, was permissive: see *Taylor v. Pede*, 44 L. T. 514.

*Guardians ad litem.*—See O. XVI., Part III., *post*, p. 179, and O. LV., r. 27, *post*, p. 413.

*Practice under the Rule.*—See, as to infants, Dan. Pr., pp. 174, 175; Chitt. Arch., p. 1137. As to persons of unsound mind, Dan. Pr., pp. 183, 184; Chitt. Arch., pp. 1144—1146. For forms of proceedings, see Dan. Forms, pp. 46, 47, 59, 60. For form of order, see 2 Seton, 706, No. 6. The application is by notice of motion or summons. For the cases collected, see Morgan, pp. 326, 327.

*Official solicitor.*—The official solicitor is usually appointed: Dan. Pr., p. 327. As to his costs, see O. LXV., r. 13, *post*, p. 484.

*Service dispensed with.*—See *Lambert v. Turner*, 10 W. R. 335.

*Infant residing abroad.*—The rule applies: *O'Brien v. Maitland*, 10 W. R. 275.

*Originating summons.*—The rule applies to a case where proceedings are commenced by originating summons: *Re Pepper*, 32 W. R. 765.

*Six clear days.*—Sunday was reckoned as one of such days: *Brewster v. Thorp*, 11 Jur. 6.

2. Where any defendant fails to appear to a writ of summons, and the plaintiff is desirous of proceeding upon default of appearance under any of the following Rules of this Order, or under Order XV., Rule 1, he shall, before taking such proceeding upon default, file an affidavit of service, or of notice in lieu of service, as the case may be.

Order XIII.  
rr. 2—4.

102.

Affidavit of service.

[O. XIII. r. 2.]

# **AFFIDAVIT OF SERVICE.**

*Form of affidavit.*—See Dan. Forms, pp. 166—171. As to the form of affidavit where notice of writ served, see *Bustros v. Bustros*, 14 Ch. D. 849; and see *Huthwaite v. Smith*, W. N. (1885), 192, where writ served out of the jurisdiction.

*Contents of affidavit.*—See O. LXVII., r. 9, *post*, p. 508.

*Certificate in lieu of affidavit.*—The Court has no power to allow a certificate of service to be filed in lieu of the affidavit, even where it appears that by the law of the country where service effected, the process-server cannot make an affidavit as prescribed by this rule: *Ford v. Miesche*, 16 Q. B. 57.

3. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and the defendant fails, or all the defendants, if more than one, fail, to appear thereto, the plaintiff may enter final judgment for any sum not exceeding the sum indorsed on the writ, together with interest at the rate specified (if any), or (if no rate be specified) at the rate of five per cent. per annum, to the date of the judgment, and costs.

103.

Writ indorsed with liquidated demand.

[Cf. O. XIII. rr. 3, 5.]

*Special indorsement.*—See O. III., rr. 6, 7, *ante*, pp. 132—134.

*Effect of Rule.*—This rule corresponds with s. 27 of the C. L. P. Act, 1852. Under that section, however, execution could not issue on the judgment entered till the expiration of eight days from the last day for appearance. There is no such restriction in this rule. And the general rule now is that execution may issue immediately upon any judgment for the recovery of money: O. XLII., r. 17, *post*, p. 344.

*Final judgment.*—For forms of judgment under rules 3—5, see App. F, *post*, p. 585.

*Practice on entering judgments:*—

(a) *In Ch. Div.*—See Dan. Pr., pp. 358 *et seq.*; 1 Seton, p. 12; Dan. Forms, p. 171, note (t).

(b) *In Q. B. D.*—See Chit. Arch., pp. 260, 261.

*Claims for foreclosure and on covenant.*—A writ was indorsed with a claim for the amount due on a covenant in a mortgage deed, and also claimed foreclosure or sale. Defendant did not appear. Upon motion for usual foreclosure judgment  *nisi*, and for liberty to sign final judgment for the amount indorsed, held, that the plaintiff was entitled under this rule to sign judgment for the liquidated demand, notwithstanding that the claim was joined with a claim for foreclosure: *Bissett v. Jones*, 32 Ch. D. 635.

*Costs.*—For scale of fixed costs in case of judgment by default, see Practice Rules, *post*, p. 704.

4. Where the writ of summons is indorsed for a liquidated demand, whether specially or otherwise, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may enter final judgment, as in the preceding Rule, against such as have not appeared, and may issue execution upon such judgment without prejudice to his right to proceed with the action against such as have appeared.

104.

Several defendants to writ indorsed with liquidated demand.

[Cf. O. XIII. rr. 4, 5.]

**Order XIII.**  
rr. 5—7.

105.

Claim for  
damages.

[Cf. O. XIII.  
r. 6.]

Assessment of  
damages.

5. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and the defendant fails, or all the defendants if more than one fail, to appear, the plaintiff may enter interlocutory judgment, and a writ of inquiry shall issue to assess the value of the goods and the damages, or the damages only, as the case may be, in respect of the causes of action disclosed by the indorsement on the writ of summons. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct.

*Interlocutory judgment.*—For form of judgment after assessment of damages, see Appendix F, Nos. 2, 4, *post*, pp. 585, 586.

*Effect of Rule.*—An important change in practice was made by the last sentence of this rule. The assessment of damages often involves difficult questions, both of law and of fact. It may prove to be of great advantage that questions of damages may be ordered to be tried by a Judge, or a Judge and jury, or a Judge with assessors, or a referee, official or special. See O. XXXVI., *post*, p. 288. In *Macdonald v. Antelme Patterson & Co.*, W. N. (1884), 72, the damages were ordered to be ascertained by a Master.

It would seem that, under this rule, where the action is brought for the specific recovery of chattels, the plaintiff may, upon default of appearance, have judgment for the delivery of the chattels; and may then enforce that judgment under O. XLII., r. 6, *post*, p. 340: *Ivory v. Cruickshank*, W. N. (1875), 249, per Quain, J., at Chambers.

*Claim of injunction.*—The rule does not apply where an injunction is claimed, but the plaintiff must proceed under the provisions of r. 12, *infra*: *Part v. Griffiths*, 28 Sol. J. 339.

106.

Several de-  
fendants, some  
appearing.

6. Where the writ is indorsed as in the last preceding Rule mentioned, and there are several defendants, of whom one or more appear to the writ, and another or others of them fail to appear, the plaintiff may sign interlocutory judgment against the defendant or defendants so failing to appear, and the value of the goods and the damages, or either of them, as the case may be, may be assessed, as against the defendant or defendants suffering judgment by default, at the same time as the trial of the action or issue therein against the other defendant or defendants, unless the Court or a Judge shall otherwise direct. Provided that the Court or a Judge may order that instead of a writ of inquiry or trial, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct.

This rule was introduced in 1883.

107.

Claim for  
damages and  
liquidated  
demand.

7. Where the writ is indorsed with a claim for detention of goods and pecuniary damages, or either of them, and is further indorsed for a liquidated demand, whether specially or otherwise, and any defendant fails to appear to the writ, the plaintiff may enter final judgment for the debt or liquidated demand, interest and costs against the defendant or defendants failing to appear, and interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in such of the preceding Rules of this Order as may be applicable.

This rule was introduced in 1883.



8. In case no appearance shall be entered in an action for the recovery of land, within the time limited by the writ for appearance, or if an appearance be entered, but the defence be limited to part only, the plaintiff shall be at liberty to enter a judgment that the person whose title is asserted in the writ shall recover possession of the land, or of the part thereof to which the defence does not apply.

Order XIII.  
rr. 8—12.

108.

Action for  
recovery of  
land.

[O. XIII. r. 7.]

The corresponding repealed rule was in substance the same as s. 177 of the C. L. P. Act, 1852.

*Form of judgment.*—See App. F, No. 3, *post*, p. 585. The form was introduced in 1883. The judgment now describes the land specifically in accordance with the writ.

*Effect of Rule.*—In the Chancery Division judgment will not be entered under this rule where any defendant has appeared: see Dan. Forms, p. 173, n. (*ad*).

9. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, double value, or damages for breach of contract, or wrong or injury to the premises claimed, upon a writ for the recovery of land, he may enter judgment as in the last preceding Rule mentioned for the land; and may proceed as in the other preceding Rules of this Order mentioned as to such other claim so indorsed.

109.

Assessment  
of damages  
in action for  
recovery of  
land.

[O. XIII. r. 8.]

No claim other than those mentioned in this rule can be joined with a claim for the recovery of land, without leave: see O. XVIII., r. 2, *post*, p. 199, and note thereto. The words "double value" and "or wrong, &c.," were added by R. S. C., Dec. 1885, r. 4.

10. Where judgment is entered pursuant to any of the preceding Rules of this Order, it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may be just.

110.

Setting aside  
judgment.

*Setting aside judgment.*—The terms commonly imposed have been the payment by the defendant of the costs of the application, pleading without delay, and sometimes bringing money into Court: see *Watt v. Barnett*, 3 Q. B. D. 183.

Mere lapse of time is not necessarily a bar to an application to set aside a judgment by default. Where judgment in default of appearance had been entered against a married woman who had separate estate without power of anticipation, and ten months afterwards application was made to set it aside, the application was granted unconditionally, and leave to defend given: *Atwood v. Chichester*, 3 Q. B. D. 722.

*Practice.*—See Dan. Pr., pp. 363, 364.

For forms of proceedings, see Dan. Forms, pp. 177, 178; Chitt. Forms, p. 187.

11. Where a defendant fails to appear to a writ of summons issued out of a District Registry, and the defendant had the option of entering an appearance either in the District Registry or in the Central Office, judgment for want of appearance shall not be entered by the plaintiff until after such time as a letter posted in London on the previous evening, in due time for delivery to him on the following morning, ought, in due course of post, to have reached him.

111.

Writ in District  
Registry.

[Cf. O. XIII.  
r. 5a.]

See O. XII., r. 9, *ante*, p. 158.

12. In all actions not by the Rules of this Order otherwise specially provided for, in case the party served with the writ, or in

112.

Default in  
other actions.

Order XIII.  
rr. 12—14.

[CE. O. XIII.  
r. 9.]

Admiralty actions *in rem* the defendant, does not appear within the time limited for appearance, upon the filing by the plaintiff of a proper affidavit of service, and, if the writ is not specially indorsed under Order III., Rule 6, of a statement of claim, the action may proceed as if such party had appeared, subject, as to actions where an account is claimed, to the provisions of Order XV.

*Default of appearance.*—As to moving for judgment on admissions when one of several defendants has not appeared, see *Parsons v. Harris*, 6 Ch. D. 694, decided on the repealed rule.

As to procedure in a foreclosure suit, where defendant did not appear, and statement of claim filed, see *Potter v. Flint*, 48 L. J., Ch. 696; *Geo v. Bell*, 35 Ch. D. 166.

As to statement of claim on non-appearance, see O. XIX., r. 10, and O. LXVII., r. 4, *post*, pp. 266, 507.

*Action in rem.*—Where in a default action *in rem* no statement of claim had been delivered, though the writ, though not specially indorsed, contained particulars of the claim, judgment was given for the plaintiff: *The Hilda*, 58 L. T. 29.

113.  
Default in  
Admiralty  
actions.

13. In Admiralty actions *in rem*, upon default of appearance, if, when the action comes before him, the Judge is satisfied that the plaintiff's claim is well founded, he may pronounce for the claim with or without a reference to the Admiralty Registrar or to the Admiralty Registrar assisted by merchants, and may at the same time order the property to be appraised and sold, with or without previous notice, and the proceeds to be paid into Court, or may make such order as he shall think just.

*Practice under the Rule.*—In order to obtain judgment by default under this and the last preceding rule in an action *in rem*, the ten days stated in O. XXI., r. 4, must elapse, and a notice of trial under O. XXXVI., r. 11, must be filed in the Registry.

For cases prior to the Rules of 1883, see Roscoe's Admiralty Practice, edition of 1882, p. 173.

See as to references in Admiralty actions, O. LVI., *post*, p. 427. As to appraisalment and sale, see O. LI., r. 14, *post*, p. 356.

114.  
Suggestion of  
breaches in  
action on  
bonds.

14. Where the writ is indorsed with a claim on a bond within 8 & 9 Will. 3, c. 11, and the defendant fails to appear thereto, no statement of claim shall be delivered, and the plaintiff may at once suggest breaches by delivering a suggestion thereof to the defendant or his solicitor, and proceed as mentioned in the said statute and in 3 & 4 Will. 4, c. 42, s. 16.

As to the history of the 8 & 9 Will. 3, c. 11, see *Preston v. Davis*, L. R., 8 Ex. 19. Now that in an action on such a bond the plaintiff may claim damages for past, and an injunction against future, breaches, the procedure under the statute seems unnecessary.

Order XIV.  
r. 1.

## ORDER XIV.

### LEAVE TO SIGN JUDGMENT AND DEFEND WHERE WRIT SPECIALLY INDORSED.

115.  
Application  
for judgment.  
[CE. O. XIV.  
r. 1.]

1. Where the defendant appears to a writ of summons specially indorsed under Order III., Rule 6, the plaintiff may, on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action and the amount claimed (if any), and stating that in his belief there is no defence to the



action, apply to a Judge for liberty to enter final judgment for the amount so indorsed, together with interest, if any, or for recovery of the land (with or without rent or mesne profits), as the case may be, and costs. The Judge may thereupon, unless the defendant by affidavit or otherwise shall satisfy him that he has a good defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him to defend, make an order empowering the plaintiff to enter judgment accordingly.

*Effect of Rule.*—By this rule, the summary procedure under this Order is extended to actions for the recovery of land by landlords against tenants holding over or persons claiming under such tenants. Under s. 213 of the C. L. P. Act, 1852, a summary procedure is given by which a tenant holding over may be ordered to find bail as a condition of liberty to defend such an action.

See notes to Order III., r. 6, *ante*, p. 133.

For forms of order and final judgment under this rule, see *post*, App. F, No. 5, *post*, p. 586, and App. K, No. 6, *post*, p. 613.

#### CASES TO WHICH THE ORDER IS APPLICABLE.

*Foreign judgment.*—See *Grant v. Euston*, 13 Q. B. D. 302.

*Corporation.*—See *Shelford v. Louth Railway*, 4 Exch. D. 317.

*Married Woman.*—See *Bursill v. Tanner*, 13 Q. B. D. 691; *Perks v. Myhra*, W. N. (1884), 64. For form of judgment, see *Bursill v. Tanner* (*ubi sup.*); *Sent v. Morley*, 20 Q. B. D. 120. Execution must be limited to such separate estate as the defendant is not restrained from anticipating. It is not, however, necessary, upon an application against a married woman for debts contracted before marriage, to prove that at the time of the judgment she is possessed of separate estate: *Downs v. Fletcher*, 21 Q. B. D. 11. For cases decided before the Married Women's Property Act, 1882, see *Grtner v. Fitzgibbon*, 50 L. J., Ch. 17; *Durwent v. Richbotts*, 3 Q. B. D. 178.

*Recovery of land.*—A writ may be specially indorsed in an action by mortgagee against mortgagor to recover possession of the mortgaged premises under an attornment clause: see *Daubuz v. Livingston*, 13 Q. B. D. 347; *Hall v. Comfort*, 13 Q. B. D. 11.

*Third parties.*—See O. XVI., r. 52; *Gloucestershire Banking Co. v. Philipps*, 12 Q. B. D. 533.

#### CASES TO WHICH THE ORDER IS NOT APPLICABLE.

*Arrears of alimony.*—A claim of arrears of alimony, *pendente lite*, cannot be specially indorsed: *Bailey v. Bailey*, 13 Q. B. D. 555.

*Recovery of land.*—A writ cannot be specially indorsed where the claim is by a landlord against a tenant under a forfeiture clause: *Burns v. Walford*, W. N. (1884), 31; *Munsergh v. Rimell*, W. N. (1884), 34. Plaintiff must have been party to the lease or agreement sued upon, or defendant must have paid rent, or done some act estopping him from denying plaintiff's title: *Cassidy v. Hellyer*, 17 Q. B. D. 97.

*Claim for more than mere liquidated demand.*—The Order does not apply to a case where the writ is indorsed with a claim in addition to one for a liquidated demand, the indorsement not being a special indorsement under O. III., r. 6: *Imbert-Terry v. Carver*, 34 Ch. D. 506; *Clarke v. Berger*, 36 W. R. 809.

**PRACTICE UNDER THE RULE.**—See Dan. Pr., pp. 366—369; Chit. Arch., pp. 269—277. For forms of proceedings, see Dan. Forms, pp. 180—182; Chitt. Forms, pp. 112—118.

#### AFFIDAVIT.

*When to be made.*—Need not be made before summons issued: *Begg v. Cooper*, 40 L. T. 29.

*By whom to be made.*—The words, "or by any other person," are intended to enable a corporation to take advantage of the rule: see *Bank of Montreal v. Cameron*, 2 Q. B. D. 536; decided on the rule of 1875, which did not contain these words. An affidavit by plaintiff's solicitor, not stating his means of knowledge, is not sufficient: *Edwards v. Davis*, W. N. (1888), 59.



**Order XIV.**  
**rr. 1—3.**

*Dismissal of summons.*—No bar to fresh application on fresh materials: *Wagstaff v. Jacobowitz*, W. N. (1884), 17.

*Remission of action to County Court.*—Where there is an intention to apply under this Order, an application to remit to the County Court may be adjourned until the summons is disposed of: *Smith v. Hurley*, W. N. (1884), 99.

*Bankruptcy of defendant.*—Where a debtor's summons under the Act of 1869 had been dismissed, an application under this Order in respect of the same transaction was held to be regular: *Ray v. Barker*, 4 Ex. D. 279; and where a debtor was really solvent, held that an application under this Order, and not by debtor's summons, was the appropriate remedy: *Ex parte Sewell*, 13 Ch. D. 266. The fact of the defendant having gone into liquidation since action brought will not prevent judgment being given against him under this Order, if the Court of Bankruptcy has refused to stay the action: *Clifford v. Budds*, W. N. (1884), 40.

*Costs.*—As to costs where less than 50*l.* recovered, see *Bye v. Kirby*, W. N. (1883), 195. See also *Davies v. Stevens*, W. N. (1884), 9.

*Appeal.*—An appeal from an order for judgment under this rule must be brought within twenty-one days: *Standard Discount Co. v. La Grange*, 3 C. P. D. 67.

116.  
Procedure by  
summons.  
[Cf. O. XIV.  
r. 2.]

2. The application by the plaintiff for leave to enter final judgment under the last preceding Rule shall be made by summons returnable not less than *four clear days* after service, accompanied by a copy of the affidavit and exhibits referred to therein.

No time is limited by rule within which the plaintiff must make the application. It may be presumed, however, that such application will not be entertained unless made at an early opportunity. Under the corresponding repealed rule the time was two clear days for the return of the summons.

117.  
Showing  
cause.  
[Cf. O. XIV.  
r. 3.]

3. The defendant may show cause against such application by affidavit, or (except in actions for the recovery of land) by offering to bring into Court the sum indorsed on the writ. Such affidavit shall state whether the defence alleged goes to the whole or to part only, and (if so) to what part, of the plaintiff's claim. And the Judge may, if he think fit, order the defendant, or, in the case of a corporation, any officer thereof, to attend and be examined upon oath; or to produce any leases, deeds, books, or documents, or copies of or extracts therefrom.

*Effect of Rule.*—The grounds given in this rule and in rule 1 for allowing the defendant to defend are:—An offer to bring the amount into Court; satisfying the Judge that he has a good defence on the merits; disclosing such facts as the Judge thinks sufficient to entitle him to defend.

*Affidavit.*—A mere affidavit that there is a defence is not sufficient. But where the affidavit shows what the defence is, and gives reasons for thinking it is substantial, and will be sustained by evidence, the defendant ought to be admitted to defend unconditionally: *Rumacles v. Mesquita*, 1 Q. B. D. 416. The facts disclosed in the affidavit must justify a reasonable belief that defendant is entitled to succeed in the action: *London, &c. Stock Exchange Co. v. Willis*, 28 Sol. J. 478.

*Hearsay evidence.*—Is admissible for the purpose of resisting plaintiff's application: *Harrison v. Bottenheim*, 26 W. R. 362.

*New affidavit.*—On appeal to a Divisional Court a new affidavit was allowed, as a matter of convenience: *Robinson v. Bradshaw*, 32 W. R. 95.

*Affidavits in reply.*—May be allowed by the Court or a Judge: *Davies v. Spence*, 1 C. P. D. 719; *Girvin v. Grepe*, 13 Ch. D. 174; *Rotheram v. Priest*, 49 L. J., C. P. 105.

*Appeal.*—An appeal against the discretion exercised in giving leave to defend will be rarely allowed: *Papayanni v. Coutpas*, W. N. (1880), 109.

*Principles on which leave given.*—The Order is intended to apply to such cases as are in reality undefended: *Thompson v. Marshall*, 28 W. R. 220. Judgment ought not to be ordered if the defendant can show a *prima facie* defence, or satisfy the Judge that he ought to be allowed to interrogate the plaintiff: *Harrison v. Bottenheim*, 26 W. R. 362. Although the claim may be undisputed, the existence of a counter-claim connected with the same transaction may be sufficient to entitle the defendant to defend: *Anglo-Italian Bank v. Davies*, 38 L. T. 197; and a set-off entitles him to defend: *Groome v. Rathbone*, 41 L. T. 591. In an action for calls brought by the liquidator of a company against a shareholder, judgment under this rule was given, the only defence being a set-off and counter-claim: *Government Co. v. Dempsey*, 50 L. J., Q. B. 199; following *Whitehouse's Case*, 9 Ch. D. 595. In a later case the Court of Appeal declined to follow these decisions: *British Insulite Co. v. Levi*, July, 1885 (*not reported*). Conditional leave to defend was given in an action for calls where defendant desired to cross-examine the clerk who posted the letter of allotment: *Carta Para Co. v. Fastnedge*, 30 W. R. 880. Where the nature of the claim involves the taking of accounts between the parties, this Order is not applicable: *Wallingford v. Mutual Society*, 5 App. Cas. 685: see the general principles as to leave to defend stated by Lord Blackburn, at p. 705. Where the defendant is a surety, and he has not acknowledged his indebtedness, and there is nothing to show that the defence is merely for delay, he is entitled to put the plaintiff to proof of his claim, and will be admitted to defend: *Lloyd's Banking Co. v. Ogle*, 1 Ex. D. 262. Where fraud was set up as an answer to an action by an indorsee against the acceptor of a bill, it was held that the defendant was entitled to unconditional leave to defend: *Millard v. Baddeley*, W. N. (1884), 96; see, too, *Fuller v. Alexander*, 51 L. J., Q. B. 103.

Order XIV.  
rr. 3—5.

*Conditional leave to defend.*—See *Ray v. Barker*, 4 Ex. D. 279; and r. 6, *infra*.

*Bringing sum claimed into Court.*—A defendant is not entitled to defend as of right by bringing the sum claimed into Court. The provisions of this rule must be read subject to the provisions of rule 1: *Crump v. Cavendish*, 5 Ex. D. 211.

*Examining parties.*—This power is to be exercised only in exceptional cases: *Millard v. Baddeley*, W. N. (1884), 96.

*Forms of Order.*—Giving leave to defend unconditionally: see App. K, No. 7, *post*, p. 613; *Egerton v. Anderson*, W. N. (1884), 95, where it is stated that the words in the Form, “within      days after service of this Order,” ought to be omitted. Giving leave to defend on bringing money into Court: see App. K, No. 8, *post*, p. 613. For form of judgment as to part, and leave to defend as to residue, see App. K, No. 9, *post*, p. 613.

4. If it appear that the defence set up by the defendant applies only to a part of the plaintiff's claim, or that any part of his claim is admitted, the plaintiff shall have judgment forthwith for such part of his claim as the defence does not apply to or as is admitted, subject to such terms, if any, as to suspending execution, or the payment of the amount levied or any part thereof into Court by the sheriff, the taxation of costs, or otherwise, as the Judge may think fit. And the defendant may be allowed to defend as to the residue of the plaintiff's claim.

118.  
Defence shown  
as to part.  
[O. XIV. r. 4.]

See *Hammer v. Flight*, 24 W. R. 346, for an application of this rule.

*Defence as to residue.*—Where part of the claim is clearly due and the rest disputable, there is no power to give leave to defend on the condition that the defendant pays the plaintiff the portion admittedly due. The proper order is judgment for that portion and leave to defend as to the rest: *Dennis v. Seymour*, 4 Ex. D. 80.

5. If it appears to the Judge that any defendant has a good defence to or ought to be permitted to defend the action, and that any other defendant has not such defence, and ought not to be permitted to defend, the former may be permitted to defend, and

119.  
Defence shown  
by one of  
several de-  
fendants.  
[O. XIV. r. 5.]



**Order XIV.**  
rr. 5—7.

the plaintiff shall be entitled to enter final judgment against the latter, and may issue execution upon such judgment without prejudice to his right to proceed with his action against the former.

120.

Leave absolute  
or conditional.  
[Cf. O. XIV.  
r. 6.]

**6.** Leave to defend may be given unconditionally or subject to such terms as to giving security, or time and mode of trial (in cases which under these Rules, may be tried without a jury) or otherwise, as the Judge may think fit.

*Conditional leave to defend.*—When the defendant does not set up a clear defence on the merits, leave to defend should not be granted unconditionally: *Ray v. Barker*, 4 Ex. D. 279. Where part of the claim is admitted he may be required to pay that portion into Court: *Oriental Bank v. Fitzgerald*, W. N. (1880), 119. Where, however, the defendant shows reason for thinking that his defence is substantial, he should not be required to pay money into Court as a condition to being given liberty to defend: *Runnacles v. Mesquita*, 1 Q. B. D. 416.

*Money paid into Court as security.*—Where the defendant had brought a sum of money into Court, he was, on the judgment in the action being given in his favour, held entitled to have the money paid out to him, although notice of appeal from the judgment had been given: *Yorkshire Banking Co. v. Beatson*, 4 C. P. D. 213.

*Service of order.*—An order to sign judgment unless a sum is paid before a day named need not be served on the defendant before judgment is signed upon it: *Hopton v. Robinson*, W. N. (1884), 77.

120 a.

Court may  
by consent  
dispose finally  
of action.

**7.** The Court or a Judge may, with the consent of all parties, dispose of the action finally and without appeal in a summary manner, and on such terms as to costs or otherwise as the Court or Judge shall think just.

The above rule is r. 5 of R. S. C., Dec., 1885.

**Order XV.**  
r. 1.**ORDER XV.****APPLICATION FOR AN ACCOUNT.**

121.

Application  
for account  
on default.  
[Cf. O. XV.  
r. 1.]

**1.** Where a writ of summons has been indorsed for an account, under O. III., r. 8, or where the indorsement on a writ of summons involves taking an account, if the defendant either fails to appear, or does not after appearance, by affidavit or otherwise, satisfy the Court or a Judge that there is some preliminary question to be tried, an order for the proper accounts, with all necessary inquiries and directions now usual in the Chancery Division in similar cases, shall be forthwith made.

*Effect of Rule.*—The words “or where the indorsement on a writ of summons involves taking an account” were introduced in 1883, and have, it is apprehended, considerably extended the operation of the rule.

*Indorsement of claim for account.*—See O. III., r. 8, *ante*, p. 134.

*Application.*—Is made by summons, supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired: see rule 2, *infra*.

*Evidence required in default of appearance.*—If no appearance is entered for the defendant—(1) an affidavit of service of the writ of summons (O. XIII., r. 2),



and of the summons for account (if served personally), and (2) a certificate of non-appearance, must be produced, as well as (3) the affidavit of the ground of the plaintiff's claim. The summons, however, need not be personally served, but will be sufficiently served if filed in the Central Office or District Registry: see O. LXVII., r. 4, *post*, p. 507.

Order XV.  
rr. 1, 2.

*The Order.*—For forms of order, see App. L., No. 28, *post*, p. 651; 1 Seton, p. 8, No. 8; 2 Seton, p. 801, Nos. 1 and 2; p. 803, No. 3; p. 848, Nos. 1 and 3. For form of adjournment of further consideration, see 1 Seton, p. 8, No. 8; p. 71, No. 4. But as to the use of this, see *Gatti v. Webster*, 12 Ch. D. 771.

*By whom made.*—The order may be made by a District Registrar: *Re Bowen*, 20 Ch. D. 538. And it may, it seems, be made in the Queen's Bench Division: *York v. Stowers*, W. N. (1883), 174; but see *contra*, *Leslie v. Clifford*, 50 L. T. 590.

*Administration.*—If an order is required under this rule in the Chancery Division "for general administration, or for the execution of a trust, or for accounts or inquiries concerning the property of a deceased person, or other property held upon any trust," it must be made by the Judge in person: O. LV., r. 15, *post*, p. 409.

*Wilful default.*—An account cannot under this Order be directed on the footing of wilful default: *Re Bowen*, 20 Ch. D. 538.

*Foreclosure and redemption actions.*—In *Smith v. Davies*, 28 Ch. D. 650, it was held that, where there is no preliminary question to be tried, and the execution of the mortgage is not put in issue, a plaintiff can, under this Order, obtain the usual foreclosure judgment; but the jurisdiction to make such an order was questioned by C. A. in *Blake v. Harvey*, 29 Ch. D. 827 (see per Cotton, L.J., at p. 831); and Chitty, J. (who decided *Smith v. Davies*), no longer makes such orders: see *Bissett v. Jones*, 32 Ch. D. 635.

Where an order for an account also directed foreclosure in default of payment, and no question was raised at Chambers as to whether the rule authorized a foreclosure order, it was held that this point could not be raised on appeal: *Dyott v. Neville*, W. N. (1887), 35.

Where in a redemption action a summons was issued for an account under this Order, it was held that the order made on the summons must be limited to preliminary accounts, and that a general redemption decree would not be made on such a summons, Bacon, V.-C., saying that it was a mistake to imagine that the Order was meant to enable the Court to do what would be equivalent to making a decree: *Clover v. Wills Building Society*, 32 W. R. 895.

*What accounts, &c., can be directed.*—Only common accounts and inquiries can be directed on an application under the rule, and not accounts and inquiries, the right to which depends on the plaintiff establishing a case for them at the hearing: *Re Gyhon*, 29 Ch. D. 834.

*Costs.*—See *Beaney v. Elliott*, W. N. (1880), 99.

*Appeal.*—An order, in the ordinary form of a foreclosure judgment, made under this Order, is for the purposes of an appeal from it a final order, and it can be appealed from at any time within a year: *Smith v. Davies*, 31 Ch. D. 595.

2. An application for such order as mentioned in the last preceding Rule shall be made by summons, and be supported by an affidavit, when necessary, filed on behalf of the plaintiff, stating concisely the grounds of his claim to an account. The application may be made at any time after the time for entering an appearance has expired.

122.  
Procedure  
by summons.  
[Cf. O. XV.  
r. 2.]

An affidavit of service must be filed before the application can be made on the ground of default of appearance: O. XIII., r. 2, *ante*, p. 163; and see note to rule 1, *ante*, p. 170.

Order XVI.  
r. 1.

123.  
Plaintiffs.  
[O. XVI. r. 1.]  
Judgment.  
  
Costs.

## ORDER XVI.

## PARTIES.

## I. Generally.

1. All persons may be joined as plaintiffs in whom the right to any relief claimed is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given for such one or more of the plaintiffs as may be found to be entitled to relief, for such relief as he or they may be entitled to, without any amendment. But the defendant, though unsuccessful, shall be entitled to his costs occasioned by so joining any person who shall not be found entitled to relief, unless the Court or a Judge in disposing of the costs shall otherwise direct.

*Provisions of S. C. Jud. Act, 1873.*—The Act of 1873, and the Rules, give a very wide latitude as to the matters which may be disposed of in a cause, the mode in which it may be dealt with, and the persons who may be made parties to it.

By s. 24 of S. C. Jud. Act, 1873, *ante*, p. 15, the plaintiff may seek in any action to enforce any claim he could hitherto have enforced in any Court whether of law or equity. The defendant may raise any defence which would hitherto have been good either at law or in equity. He may also raise, by way of counter-claim, not merely a pecuniary set-off, but anything that he could have made the subject of a cross action or suit. And he may make such counter-claim not only against the plaintiff, but against any third person, if only it be connected with the subject of the action.

The Court is bound to "grant, either absolutely or on such reasonable terms and conditions as to them shall seem just, all such remedies whatsoever as any of the parties thereto may appear to be entitled to in respect of any and every legal or equitable claim properly brought forward by them respectively in such cause or matter; so that, as far as possible, all matters so in controversy between the said parties respectively may be completely and finally determined, and all multiplicity of legal proceedings concerning any of such matters avoided:" S. C. Jud. Act, 1873, s. 24, sub-s. 7, *ante*, p. 20.

The first clause of rule 11, *post*, p. 176, is equally specific, that "no cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matters in controversy so far as regards the rights and interests of the parties actually before it."

*Effect of Order.*—The provisions of this Order relating to the selection of parties, and those of O. XVIII., relating to the joinder of various claims in the same action and in the same pleadings, are framed so as to give effect to the provisions just referred to.

*Who may be plaintiffs.*—All persons claiming any relief, *jointly, severally, or in the alternative*, may be made plaintiffs: rule 1, *supra*, and O. XVIII. r. 6, *post*, p. 201. By s. 114 of the Bankruptcy Act, 1883, a bankrupt co-contractor need not be joined.

*Who may be defendants.*—All persons against whom any relief is claimed, *jointly, severally, or in the alternative*, may be made defendants: rule 4, *post*, p. 174. And the defendants need not all be interested in all the relief claimed or all the causes of action: rule 5, *post*, p. 175. See also rules 6 and 7, *post*, p. 175.

*Interest of plaintiff or defendant in subject-matter.*—It is not necessary that either plaintiff or defendant should be concerned in all the matters in question in the same capacity. Subject to a few qualifications, either may be concerned partly in a representative capacity, partly personally: O. XVIII., rr. 3, 4, 5, 6, *post*, p. 201.

*Counter-claiming defendant.*—The defendant may bring before the Court, as co-defendants to his counter-claim, persons not already parties, against whom he seeks any relief relating to or connected with the subject-matter of the action: S. C. Jud. Act, 1873, s. 24 (3), *ante*, p. 16. See O. XIX., r. 3, *post*, p. 201, and notes thereto. See also rule 3 of this Order, as to a counter-claim where there has been a misjoinder of plaintiffs.



*Necessary parties.*—All parties may be added necessary to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the action: rule 11, *infra*.

*Rule of the three A's.*—As to making persons parties for costs only, and the so-called rule of three A's, see *A.-G. v. Bermondsey Vestry*, 23 Ch. D. 60, at p. 67; *Mathias v. Yettis*, 46 L. T. 497; *Burstall v. Beyfus*, 26 Ch. D. 35; *Barnes v. Addy*, 9 Ch. 244. It is vexatious to join parties for discovery only: *Burstall v. Beyfus* (*ubi sup.*).

*Effect of Rule.*—The present rule, it will be observed, authorises the joinder, as plaintiffs, not only of persons claiming jointly or in the alternative, but of persons claiming severally. Accordingly, where eight persons brought an action of libel, it was held under the repealed O. XVI., r. 1, that they might rightly join, though no joint injury was shown. They would, before the Act, have had to bring eight actions: *Booth v. Briscoe*, 2 Q. B. D. 496. See as to this case, and as to the effect of this rule generally, the observations of Lord Esher, M. R., and Bowen, L. J., in *Viscount Gort v. Rowney*, 17 Q. B. D. 625, at pp. 632—635. The opinion expressed by Jessel, M. R., in the earlier case of *Appleton v. Chapel Town Paper Co.*, 45 L. J., Ch. 276, seems scarcely consistent with this decision. Of course, in such a case, the assessment of damages, or the award of any other relief, should be separate: *Booth v. Briscoe*, *ubi supra*.

As to the combined effect of this Order and O. XVIII., see note to rule 1 of the latter, *post*, p. 198.

*Costs.*—Where an action was brought by two plaintiffs claiming for separate and distinct causes of action, and judgment was entered in favour of one plaintiff and against the other, it was held, that the successful plaintiff was entitled to recover from the defendant the whole of his general costs of the action, and the defendant was only entitled to recover from the unsuccessful plaintiff the costs occasioned by joining such plaintiff: *Viscount Gort v. Rowney*, 17 Q. B. D. 625.

*Security for Costs.*—Where an action was brought by two plaintiffs, one residing abroad, upon joint and separate claims, it was held that the plaintiff resident abroad could not be ordered to give security for costs: *D' Hormussee v. Grey*, 10 Q. B. D. 13.

2. Where an action has been commenced in the name of the wrong person as plaintiff, or where it is doubtful whether it has been commenced in the name of the right plaintiff, the Court or a Judge may, if satisfied that it has been so commenced through a *bonâ fide* mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as may be just.

*Effect of Rule.*—It has often happened that actions have been inadvertently brought by the wrong person; as by *cestui que trust*, instead of trustee; by mortgagor, instead of mortgagee. Often, the same mistake has been made where it was a matter of real difficulty to say which of two persons ought to sue: as in the case of contracts made by agents, as to which it is often a question of much nicety to determine who ought to sue. Though the Common Law Courts had the largest powers of adding parties, or amending misdescriptions of parties, they had no power to substitute one plaintiff for another, such as this rule confers: see *De Gendre v. Bogardus*, L. R., 7 C. P. 409. A mistake of law is within this rule: *Duckett v. Gover*, 6 Ch. D. 82. But there must have been a *bonâ fide* mistake: *Clowes v. Hilliard*, 4 Ch. D. 413.

*Cases.*—One of several mortgagees can properly bring an action to foreclose, making his co-mortgagees defendants if they will not join as plaintiffs: *Luke v. South Kensington Hotel Co.*, 11 Ch. D. 121. As to substituting an infant *cestui que trust* for the trustee as plaintiff, see *Tildesley v. Harper*, 3 Ch. D. 277. Such substitution ought not to be made without notice to the defendant: *S. C.* Proof of his assent or of an indemnity offered to him are the conditions on which the assignor of a debt will be added as plaintiff when an action is commenced by the assignee, see *Turquand v. Fearon*, 4 Q. B. D. 280. An action was commenced by tenant for life, on a lease. After action brought, it was discovered that she had no power to give the lease. She died during suit, and the remainderman was added as co-plaintiff with her executor: *Long v. Crossley*, 13 Ch. D. 388. As to a shareholder making the company a

Order XVI.  
r. 1, 2.

124.

Wrong plain-  
tiff by mistake.  
Amendment.  
[O. XVI. r. 2.]



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co-plaintiff in an action against the directors, see *Pender v. Lushington*, 6 Ch. D. 70; *Silber Light Co. v. Silber*, 12 Ch. D. 717. When it was doubtful whether a road-contractor or the vestry ought to sue a tramway company which had injured the road, the vestry was added as a co-plaintiff: *Val de Travers Asphalte Co. v. London Tramways Co.*, 48 L. J., C. P. 312; and see, too, *Blackburn Union v. Brooks*, 26 W. R. 57.

A plaintiff who has no right to sue will not be allowed to amend by joining as co-plaintiff a person who has such right: *Walcott v. Lyons*, 29 Ch. D. 584.

A new plaintiff cannot be substituted for the original plaintiff except by the consent of the original plaintiff: *Emden v. Carte*, 17 Ch. D. 169. In that case an uncertificated bankrupt commenced an action for services as an architect. The Court, on the request of the trustee, added the trustee as a co-plaintiff under the then rule 13, and gave him the conduct of the action.

*Practice under the Rule.*—The application under this rule can only be made by a plaintiff. It should in general be made by summons: *Wilson v. Church*, 9 Ch. D. 552. See Dan. Pr., 263; Chitt. Arch., p. 1021. For form of summons, see Dan. Forms, p. 140; Chitt. Forms, p. 564.

*Consent of new plaintiff.*—A person cannot be added as a plaintiff without his consent in writing (rule 11, *infra*), even though he be indemnified against costs: *Tryon v. National Provident Institution*, 16 Q. B. D. 678.

125.

Counter-claim  
or set-off in  
case of mis-  
joinder.

**3.** Where in an action any person has been improperly or unnecessarily joined as a co-plaintiff, and a defendant has set up a counter-claim or set-off, he may obtain the benefit thereof by establishing his set-off or counter-claim as against the parties other than the co-plaintiff so joined, notwithstanding the misjoinder of such plaintiff or any proceeding consequent thereon.

This rule was introduced in 1883, and is founded on s. 20 of the C. L. P. Act, 1860.

126.

Defendants.

[O. XVI. r. 3.]

Judgment.

**4.** All persons may be joined as defendants against whom the right to any relief is alleged to exist, whether jointly, severally, or in the alternative. And judgment may be given against such one or more of the defendants as may be found to be liable, according to their respective liabilities, without any amendment.

*Effect of Rule.*—The rule here laid down as to defendants is exactly analogous to that given as to plaintiffs by rule 1, and will be similarly construed. In *Honduras Ry. Co. v. Lefevre*, 2 Ex. D. 301, the plaintiffs sought to enforce a contract against the defendant on the ground that T., by whom it was made, was his agent to make it. The Court of Appeal, affirming the Exchequer Division, ordered T. to be added as a defendant; the plaintiff claiming to recover against him, in the alternative of his not having had authority to contract. The question in that case turned on the construction of the then rule 6 (now rule 7). It was not necessary to decide whether T. could have been originally made a defendant; and Cockburn, C. J., expressed doubt upon the point. The construction of the corresponding rule of the repealed O. XVI. came before the Court of Appeal upon similar facts, in *Child v. Stenning*, 5 Ch. D. 695. The action was for trespass to land, of which the plaintiff was lessee under W. The defence was a right of way granted by W. It was held that the plaintiff might well amend his action by adding W. as a defendant; claiming against him, in case the right of way was established, damages for breach of covenant for quiet enjoyment. See also *Edwards v. Lowther*, 45 L. J., C. P. 417.

*Adding defendants for payment of costs only.*—See *Mathias v. Yetts*, 46 L. T. 497; *A.-G. v. Vestry of Bermondsey*, 23 Ch. D. 60, at p. 67; *Heatley v. Newton*, 19 Ch. D. 326. But see *Burstall v. Beyfus*, 26 Ch. D. 35, in which case it was held that it is vexatious to make solicitors or others parties to an action without seeking any relief against them, except payment of costs or discovery. And see *Barnes v. Addy*, 9 Ch. 244.

*Alternative claims.*—As to inconsistent alternatives, see *Honduras Ry. Co. v. Lefevre*, 2 Ex. D. 301; *Evans v. Buck*, 4 Ch. D. 432; *Child v. Stenning*, 5 Ch. D. 695; *Bagot v. Easton*, 7 Ch. D. 1.

The two following rules, 5 and 6, seem to be developments of the principle laid down by the present rule.

5. It shall not be necessary that every defendant shall be interested as to all the relief prayed for, or as to every cause of action included in any proceeding against him; but the Court or a Judge may make such order as may appear just to prevent any defendant from being embarrassed or put to expense by being required to attend any proceedings in which he may have no interest.

See note to the last rule, and *Cox v. Barker*, 3 Ch. D. 359.

As to meaning of the words "cause of action" in this rule, see note to O. XVIII., r. 1, *post*, p. 198.

6. The plaintiff may, at his option, join as parties to the same action all or any of the persons severally, or jointly and severally liable on any one contract, including parties to bills of exchange and promissory notes.

See note to rule 4, and *Morgan*, p. 334.

7. Where the plaintiff is in doubt as to the person from whom he is entitled to redress, he may, in such manner as hereinafter mentioned, or as may be prescribed by any special order, join two or more defendants, to the intent that the question as to which, if any, of the defendants is liable, and to what extent, may be determined as between all parties.

See note to rule 4.

8. Trustees, executors, and administrators may sue and be sued on behalf of or as representing the property or estate of which they are trustees or representatives, without joining any of the persons beneficially interested in the trust or estate, and shall be considered as representing such persons; but the Court or a Judge may, at any stage of the proceedings, order any of such persons to be made parties either in addition to or in lieu of the previously existing parties.

*Denial of representative character.*—See O. XXI., r. 5, *post*, p. 218.

*Partition.*—This rule applies to actions for sale and partition under the Partition Acts: *Stace v. Gage*, 8 Ch. D. 451; *Simpson v. Denny*, 10 Ch. D. 28.

*Redemption.*—In an action for redemption, trustees of the equity of redemption can sue without the parties beneficially interested being joined: *Mills v. Jennings*, 13 Ch. D. 639.

*Administration.*—See *Re Rees*, 15 Ch. D. 490, as to parties interested in an administration decree, and *Lovesy v. Smith*, 15 Ch. D. 655, as to rectification of marriage settlement.

*Costs.*—In *Re Cooper*, 20 Ch. D. 611, where beneficiaries were made parties unnecessarily, their costs were disallowed.

9. Where there are numerous persons having the same interest in one cause or matter, one or more of such persons may sue or be sued, or may be authorized by the Court or a Judge to defend in such cause or matter, on behalf or for the benefit of all persons so interested.

This was long the practice of the Court of Chancery: see Dan. Ch. Pr., p. 253. A plaintiff suing under this rule must indorse his writ accordingly: see O. III., r. 4, *ante*, p. 132, and note thereto.

*Cases.*—In *De Hart v. Stevenson*, 1 Q. B. D. 313, it was held that one part-owner of a ship might sue under this rule on behalf of himself and his co-owners for freight. As to co-owners of a patent, see *Sheehan v. Great Eastern Railway*, 16 Ch. D. 59. See further *Fraser v. Cooper*, 21 Ch. D. 718, where a bondholder was added to represent dissentient bondholders. Judgment in an action against the representatives of a class is, in the absence of fraud or collusion, binding on other members of the class in a fresh action in respect of the rights affected by such judgment: *Commissioners of Sewers v. Gellatly*, 3 Ch. D. 610.

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rr. 5—9.

127.  
Defendants not all interested in all the relief sought.

[O. XVI. r. 4.]

128.  
Several defendants liable on one contract.

[O. XVI. r. 5.]

129.  
Several defendants in cases of doubt.

[O. XVI. r. 6.]

130.  
Trustees, executors, and administrators.

[O. XVI. r. 7.]

131.  
Numerous parties in the same interest.

[O. XVI. r. 9.]



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rr. 9—11.**

See *Watson v. Carè*, 17 Ch. D. 19, as to the course to be pursued where a representative action is brought, and one of the parties represented is dissatisfied with an order made therein.

In *Andrews v. Salmon*, W. N. (1888), 102, defendants were authorized to defend on behalf of and for the benefit of all the members of the committee of a club. The case is incorrectly reported as to costs: see *S. C.*, W. N. (1888), 176.

132.  
Probate  
actions.

[*Cf.* O. XVI.  
r. 12.]

133.

Mis-joinder  
and non-  
joinder.

[*Cf.* O. XVI.  
r. 13.]

Amendment.

10. Subject to the provisions of the Acts and these Rules, in all Probate actions the rules as to parties, in use in the Court of Probate previously to the commencement of the principal Act, shall continue to be in force.

11. No cause or matter shall be defeated by reason of the misjoinder or non-joinder of parties, and the Court may in every cause or matter deal with the matter in controversy so far as regards the rights and interests of the parties actually before it. The Court or a Judge may, at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court or a Judge to be just, order that the names of any parties improperly joined, whether as plaintiffs or as defendants, be struck out, and that the names of any parties, whether plaintiffs or defendants, who ought to have been joined, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter, be added. No person shall be added as a plaintiff suing without a next friend, or as the next friend of a plaintiff under any disability, without his own consent in writing thereto. Every party whose name is so added as defendant shall be served with a writ of summons or notice in manner hereinafter mentioned, or in such manner as may be prescribed by any special order, and the proceedings as against such party shall be deemed to have begun only on the service of such writ or notice.

Addition of  
plaintiff or  
next friend.

Addition of  
defendant.

This rule is substantially the same as the former O. XVI., r. 13, the only material change being the provision that the consent of a new plaintiff shall be *in writing*. The rule is an extension of 15 & 16 Vict. c. 86, s. 49 (now repealed), by which suits were not to be dismissed for misjoinder of plaintiffs.

*Discretion of Court.*—Upon an application by defendants that other defendants be added, the Court or Judge may exercise a discretion, and the order will not be made unless it is shown that the nonjoinder complained of will prejudice the parties to the action, or “that the presence before the Court of additional parties is necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the cause or matter”: *Leduc v. Ward*, 54 L. T. 214; and see *Harry v. Davey*, 2 Ch. D. 721 (action for specific performance by A. against B. of agreement for sale of property by A. to B. A. purported to sell under power of sale contained in mortgage to him by C. as trustee of will of D. B. received notice from unpaid residuary legatees of D. of claim by them to the property. Application by B. that residuary legatees should be added as defendants was refused); *Sanders v. Peck*, 32 W. R. 462 (plaintiff had advanced money to building contractors on security of their claims against defendant. Action was referred for accounts to be taken. Application by defendant that contractors should be added as defendants was refused on ground that their claims did not conflict with those of plaintiff).

*Want of parties.*—Pleas in abatement and demurrers for want of parties being abolished, the proper course to be taken by a defendant who contends that the plaintiff has not joined necessary parties, is to apply under this rule: *Wenderman v. Société d'Electricité*, 19 Ch. D. 246. So, where an action is brought against one only of several joint contractors, the defendant is entitled as of right to have his co-contractors joined: *Pilley v. Robinson*, 20 Q. B. D. 155, following *Kendall v. Hamilton*, 4 App. Cas. 504. And it seems that a defendant desirous of raising



the objection of non-joinder as a defendant of some one jointly liable with him may apply by summons, supported by proper evidence, to have the action stayed: *MacArthur v. Hood*, 1 C. & F. 550. But a defendant who seeks to make a plaintiff join a third party, either as a co-plaintiff or co-defendant, is not entitled to have the proceedings stayed until the plaintiff obtains the consent in writing of the third party to be joined as co-plaintiff, or joins him as co-defendant: *Jackson v. Kruger*, 52 L. T. 962.

*Time.*—An order under this rule may be made “at any stage of the proceedings.” Fresh parties cannot be added after final judgment: see *A.-G. v. Corporation of Birmingham*, 15 Ch. D. 423; *Hurst v. Hurst*, 21 Ch. D. 278, at p. 289; *Heard v. Borgwardt*, W. N. (1883), 173, 194. In the last-named case, however, leave was given to set aside the judgment, to amend the writ by adding certain other parties as defendants, and then to enter a fresh judgment against the original defendant, who had made an admission of liability. But where the proposed new party consents he may be added, even after judgment and issue of the Chief Clerk’s certificate: *Re Mason*, W. N. (1883), 134. Where an order for foreclosure had been made, but not drawn up, and puisne incumbrancers subsequent to the plaintiff were discovered, leave was given to restore the action to the cause-book, and an order was made to amend by adding defendants: *Keith v. Butcher*, 25 Ch. D. 750. Orders were made at the trial to add plaintiffs in *House Property Co. v. H. P. Horse Nail Co.*, 29 Ch. D. 190 (action by lessees for a long term of eleven houses, of which ten were unlet when writ was issued, and by their tenant of remaining house as co-plaintiff, for damages and injunction in respect of a nuisance. After notice of trial the co-plaintiff refused to continue. The other ten houses had in the meantime been let, and an order was made at the trial to add two of the new tenants, who consented to be added, as co-plaintiffs); *Gandy v. Gandy*, 30 Ch. D. 57. In *Kino v. Rudkin*, 6 Ch. D. 160, a defendant was added at the trial.

*Who may be joined.*—It is clear that whoever might have been made a party under the earlier rules of this Order may be added under this rule, subject to such terms as the Court may think just: *Honduras Ry. Co. v. Lefeere*, 2 Ex. D. 301; *Edwards v. Lowther*, 24 W. R. 434.

*Adding or substituting plaintiffs.*—For cases in which orders have been made, see *Long v. Crossley*, 13 Ch. D. 388; *Wallis v. Smith*, 46 L. T. 473 (where a creditor who had obtained a garnishee order against plaintiff was added as co-plaintiff); *House Property Co. v. H. P. Horse Nail Co.*, 29 Ch. D. 190; *Gandy v. Gandy*, 30 Ch. D. 57.

For cases in which applications to add plaintiffs have been refused, see *De Hart v. Stevenson*, 1 Q. B. D. 313 (action on behalf of plaintiff and co-owners of a ship, where it was sought to add plaintiffs for purposes of costs only); *Dalton v. St. Mary Abbots*, 47 L. T. 349 (action for nuisance, in which it was sought to substitute as plaintiff, who was going abroad, one of his neighbours); *Jackson v. Kruger*, 52 L. T. 962; *Tryon v. National Provident Institution*, 16 Q. B. D. 678 (consent in writing necessary, even if person be indemnified against costs); *Besley v. Besley*, 37 Ch. D. 648 (the case of trustee and *cestui que trust* is not excepted from the rule, so as to enable the Court to add a trustee as co-plaintiff without his consent); *Wallcott v. Lyons*, 29 Ch. D. 584 (in this case the application was refused on the ground that the rule did not authorize the allowing a plaintiff who had no right to sue to amend by joining as co-plaintiff a person who had such right).

*Adding defendants.*—For cases in which orders have been made, see *Day v. Radcliffe*, 24 W. R. 844; *Kino v. Rudkin*, 6 Ch. D. 160 (where an order was made at the trial to add as co-defendant a person to whom the defendant had assigned his interest *pendente lite*); *Ashley v. Taylor*, 10 Ch. D. 768; *Dix v. G. W. Ry. Co.*, 34 W. R. 712 (action for specific performance of a covenant to make a road. The defendants had covenanted with the plaintiff, and had entered into separate and similar covenants with other covenantees. An order was made on the application of the defendants that the other covenantees should be joined); *Pilley v. Robinson*, 20 Q. B. D. 155 (action against a solicitor by a former client to recover moneys. Defendant’s partners at time of the retainer ordered to be added as co-defendants, on the authority of *Kendall v. Hamilton*, 4 App. Cas. 504).

For cases in which the application has been refused, see *Norris v. Beazley*, 2 C. P. D. 80; *Mills v. Griffiths*, 45 L. J., Q. B. 771 (where it was sought to make

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rr. 11—14.**

the mortgagee of a tenant who had incurred a forfeiture a party to an action of ejectment); *Eyre v. Moreing*, W. N. (1884), 58 (an application by the plaintiff that a person should be joined as co-defendant to a counter-claim on the ground of joint liability with the plaintiff); *Sanders v. Peek*, 32 W. R. 462; *Drage v. Hartopp*, 28 Ch. D. 414 (where one of two executors absconded, and the other sued a mortgagor, and the defendant sought to add the absconding executor as defendant); *Ledue v. Ward*, 54 L. T. 214.

*Striking out.*—A defendant improperly made so, may be struck out at his own instance, though he has delivered a defence: *Vallance v. Birmingham Land Corporation*, 2 Ch. D. 369. Under an order for striking out one defendant and giving general leave to amend, the plaintiff may not strike out the name of another defendant: *Wymer v. Dodds*, 11 Ch. D. 436. Where, in an action against a corporation, one of its officers was made a defendant merely for the purposes of discovery, his name was ordered to be struck out: *Wilson v. Church*, 9 Ch. D. 552.

*Inconsistent case.*—In *New Westminster Brewery Co. v. Hannah*, W. N. (1877), 35, the plaintiffs brought their action and made their case, and the decision was against them. The Court refused to allow them to add fresh plaintiffs for the purpose of setting up a new and inconsistent case: and see *Walcott v. Lyons*, 29 Ch. D. 584.

*Consent in writing of new plaintiff.*—This provision renders *Cox v. James*, 19 Ch. D. 55, obsolete. Where the plaintiff brought an action against the defendant, who insisted that one L. should be joined as co-plaintiff, or, in the alternative, applied for a stay until joinder, it was held that, as L. had not consented to be added as co-plaintiff, the Court had no right by a roundabout process to make an order which would practically override the provisions of this rule: *Jackson v. Kruger*, 52 L. T. 962. See also *Sanders v. Peek*, 32 W. R. 462; *Tryon v. National Provident Institution*, 16 Q. B. D. 678; *Besley v. Besley*, 37 Ch. D. 648.

*Citing in Probate Division.*—The practice of citing to see proceedings in Probate actions is not abolished by this rule: *Kennaway v. Kennaway*, 1 P. D. 148.

134.

Amendment,  
how and when  
made.  
[O. XVI. r.  
14.]

**12.** Any application to add or strike out or substitute a plaintiff or defendant may be made to the Court or a Judge at any time before trial by motion or summons, or at the trial of the action in a summary manner.

*Practice.*—The application should not be made *ex parte*: *Tildesley v. Harper*, 3 Ch. D. 277; *Re Colbeck*, 36 W. R. 259. It should usually be made by summons at chambers: *Wilson v. Church*, 9 Ch. D. 552. For form of summons, see Dan. Forms, p. 66; Chitt. Forms, p. 505.

135.

Amendment  
of writ and  
service.  
[Cf. O. XVI.  
r. 15.]

**13.** Where a defendant is added or substituted, the plaintiff shall, unless otherwise ordered by the Court or a Judge, file an amended copy of and sue out a writ of summons, and serve such new defendant with such writ or notice in lieu of service thereof in the same manner as original defendants are served.

As to the amendment of the writ in general, see O. XXVIII., r. 1, *post*, p. 242, and note thereto. As to notice in lieu of service, see O. XI., r. 6, and note thereto, *ante*, p. 156.

As to consolidated actions, see *Re Wortley*, 4 Ch. D. 180.

**II. Partners.**

136.

Partners.  
[Cf. O. XVI.  
r. 10.]

**14.** Any two or more persons claiming or being liable as co-partners may sue or be sued in the name of the respective firms, if any, of which such persons were co-partners at the time of the accruing of the cause of action; and any party to an action may in such case apply by summons to a Judge for a statement of the names of the persons who were, at the time of the accruing of the cause of action, co-partners in any such firm, to be furnished in such manner, and verified on oath or otherwise, as the Judge may direct. Provided that, in the case of a co-partnership which has been dissolved to the knowledge of the plaintiff, before the com-



mencement of the action, the writ of summons shall be served upon every person sought to be made liable.

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rr. 14—16.

*Effect of Rule.*—This rule is a modification of the repealed rule 10. Under the terms of that rule it was doubtful whether it applied to the case of a partner who had dissolved partnership before action brought, though he was a partner when the debt sued on was contracted: *Ex parte Young*, 19 Ch. D. 124; *Davis v. Morris*, 10 Q. B. D. 436. The present rule removes this doubt.

*Proceedings.*—As to proceedings in actions by and against partners in the name of the firm, see O. VII., r. 2, *ante*, p. 143 (disclosure of name of plaintiff firm); O. IX., r. 6, *ante*, p. 147, and note thereto (service of writ); O. XII., r. 15, *ante*, p. 159 (appearance); O. XLII., r. 10, *post*, p. 341 (execution); Dan. Pr., pp. 78, 79, 162, 163; Chitt. Arch., pp. 1092—1095; Dan. Forms, pp. 30—32; Chitt. Forms, pp. 533—536.

*Disclosure of names of partners.*—An order to disclose the names of partners under this rule is not an order for discovery within the meaning of O. XXXI., r. 21: *Pike v. Keene*, 24 W. R. 322. A plaintiff in a class suit cannot, under this rule, be compelled to give the names and addresses of the persons on behalf of whom he is suing: *Leathley v. McAndrew*, W. N. (1875), 259. For forms of summons, see Dan. Forms, p. 179; Chitt. Forms, p. 533. For form of order, see Appendix K, No. 11, *post*, p. 614.

*Service.*—The proviso to this rule, which relates to service, must be construed with the provisions of O. IX., r. 6. See note to that rule, *ante*, p. 147.

137.

15. Any person carrying on business in the name of a firm apparently consisting of more than one person may be sued in the name of such firm.

Single person trading under firm's name.  
[O. XVI. r. 10a.]

See O. IX., r. 7, and note thereto, *ante*, p. 148.

*Appearance.*—Cannot be entered by a firm: *Taylor v. Collier*, 30 W. R. 701.

### III. Persons under Disability.

138.

16. Infants may sue as plaintiffs by their next friends, in the manner heretofore practised in the Chancery Division, and may, in like manner, defend by their guardians appointed for that purpose. Married women may sue and be sued as provided by the Married Women's Property Act, 1882.

Infants and married women.  
[Cf. O. XVI. r. 8.]

**INFANTS.**—As to proceedings by and against infants generally, see Dan. Pr., pp. 104—116, 172—181; Dan. Forms, pp. 38—52; Chitt. Arch., pp. 1133—1140.

**NEXT FRIEND.**—As to written authority of next friend, see rule 20, *infra*. There must be a next friend for every application on behalf of an infant: Dan. Pr., p. 105, n. (b); *Cox v. Wright*, 9 Jur., N. S. 981.

*Who may be next friend.*—Any person may commence an action as next friend of an infant, but a defendant (unless, indeed, he be a mere formal party: *Re Taylor*, W. N. (1881), 81) may not be the next friend: *Lewis v. Nobbs*, 8 Ch. D. 591. A father, having no adverse interest to his children, will be preferred to a stranger: *Woolf v. Pemberton*, 6 Ch. D. 19.

*Removal of next friend.*—If the next friend fail in his duty towards the infant, or if any other sufficient ground be made out, the Court will order him to be removed. Thus, if he will not proceed with the action (*Ward v. Ward*, 3 Mer. 706), or will not appeal when desired to do so (*Dupuy v. Welsford*, 28 W. R. 762). He may also be removed if he is so connected with the defendants as to render it improbable that the interest of the infant will be properly supported. Thus, it was held sufficient ground for removal that the next friend stood in such a position towards the accounting parties that he might be biased in their favour, although there was no allegation of improper conduct: *Re Burgess*, 25 Ch. D. 243. Where the next friend was an entire stranger to the infant, and the action was not shown to be for the infant's benefit, the action was dismissed with costs against the next friend: *Golds v. Kerr*, W. N. (1884), 46. A next friend ought not to be removed without having an opportunity of explaining his conduct: *Re Corsellis*, 32 W. R. 965. Where an action had been brought on behalf of infants, during the lifetime of their father, by a next friend acting



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with the father's authority, and the father died, having by his will appointed his wife guardian of the infants, the next friend was removed, and the mother of the infants substituted as such: *Hutchinson v. Norwood*, 31 Ch. D. 237.

*Discovery from next friend.*—A next friend will not be ordered to make an affidavit of document: *Dyke v. Stephens*, 30 Ch. D. 189.

*Costs.*—A next friend, though liable for the costs of the action as between himself and the defendant, is, as between himself and the infant, entitled to costs out of the infant's estate of any proceedings properly instituted on behalf of the infant: *Clayton v. Clarke*, 3 De G., F. & J. 682; Dan. Pr., p. 115; *Morgan & Wurtzburg*, pp. 351 *et seq.* In general, the next friend is entitled to costs as between solicitor and client. Where, however, the costs of infant plaintiffs are ordered to be paid out of a fund in Court, to which they are entitled in reversion, party and party costs only will be immediately paid, the next friend having liberty to apply for the difference between those costs and solicitor and client costs when the fund comes into possession: *Damant v. Hennell*, 33 Ch. D. 224; *Re Burton*, W. N. (1887), 160. See also *Re Aldred*, W. N. (1888), 82, in which case North, J., refused to order an immediate taxation of costs between solicitor and client, on the ground that the additional costs occasioned by such a taxation ought not to be thrown upon a fund to which the infant was not absolutely entitled.

*Lien of Solicitor.*—The next friend having been changed, the new next friend appointed a fresh solicitor. The former solicitors were ordered to make a list of documents in their possession, and to deliver to the new solicitor such documents as were from time to time required for the prosecution of the action: *Re Hutchinson*, 34 W. R. 637.

*Infant Defendant.*—As to appointment of guardian *ad litem*, see rr. 18, 19, *infra*. As to proceedings in default of appearance, see O. XIII., r. 1, *ante*, p. 162. As to consent to procedure, see r. 21, *infra*. As to admissions in pleading by an infant, see O. XIX., r. 13, *post*, p. 209. As to the necessity for evidence on motion for judgment in default of pleading where some of the defendants are infants, see *Ripley v. Sawyer*, 31 Ch. D. 494: on withdrawal of defence, *Gardner v. Tapling*, 33 W. R. 473. As to a special case to which an infant is a party, see O. XXXIV., r. 4, *post*, p. 276.

*Guardian ad litem.*—As to duty of guardian *ad litem*, see Dan. Pr., pp. 175, 176. As to costs where solicitor appointed, see O. LXV., r. 13, *post*, p. 484.

*Costs.*—A guardian *ad litem* may be ordered to pay personally the costs of an unsuccessful application: *Bolton v. Bolton*, 28 Sol. J. 737.

**MARRIED WOMEN.**—As to proceedings by and against married women generally, see Dan. Pr., pp. 119—153, 185—193; Dan. Forms, pp. 60—62; Chitt. Arch., pp. 1147—1158. As to service on husband and wife, see O. IX., r. 3, *ante*, p. 146. As to joinder of claims by or against husband and wife, with claims by or against either of them separately, see O. XVIII., r. 4, *post*, p. 201. As to a special case to which a married woman is a party otherwise than in respect of her separate estate, see O. XXXIV., r. 4, *post*, p. 276.

*Married Women's Property Act.*—By the Married Women's Property Act, 1882 (45 & 46 Vict. c. 75), s. 1 (2), "A married woman shall be capable of entering into and rendering herself liable in respect of and to the extent of her separate property, and of suing and being sued either in contract or in tort, or otherwise, in all respects as if she were a *feme sole*, and her husband need not be joined with her as plaintiff or defendant, or be made a party to any action or other legal proceedings brought by or taken against her; and any damages or costs recovered by her in any such action or proceeding shall be her separate property; and any damages or costs recovered against her in any such action or proceeding shall be payable out of her separate property, and not otherwise."

**MARRIED WOMAN SUING ALONE.**

*Actions for tort committed before the Act.*—See *Weldon v. Winslow*, 13 Q. B. D. 784; *James v. Barraud*, 31 W. R. 786; *Weldon v. Neal*, 51 L. T. 289; *Weldon v. De Bathe*, 14 Q. B. D. 339; *Lowe v. Fox*, 15 Q. B. D. 667.

*Petition.*—Husband need not be joined as co-petitioner: *Re Outwin*, 31 W. R. 37.

*Next friend, &c.*—The rule that a married woman cannot act as a next friend or guardian *ad litem* has not been abrogated by s. 1 (2) of the Act, which is limited to actions relating to the married woman personally: *Re Duke of Somerset*, 34 Ch. D. 465.

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*Judgment against.*—For form of judgment against a married woman having separate estate, see *Bursill v. Tanner*, 13 Q. B. D. 691; *Scott v. Morley*, 20 Q. B. D. 120; see also *Gloucestershire Banking Co. v. Philipps*, 12 Q. B. D. 533. Such a judgment does not create a personal liability on the part of the married woman. It is a "proprietary," not a personal judgment. There is, therefore, no debt due from the married woman within s. 5 of the Debtors Act, 1869, and no power to commit her: *Scott v. Morley* (*ubi sup.*). Sub-ss. (3) and (4) of s. 1 of the Married Women's Property Act, 1882, are not retrospective, so as to include contracts entered into by a married woman before the Act: *Conolan v. Leyland*, 27 Ch. D. 632; *Turnbull v. Forman*, 15 Q. B. D. 234. The contract entered into by a married woman "to bind her separate property" is a contract entered into at the time when she has existing separate property. S. 1, sub-s. (4), does not enable a married woman who has no existing separate property to bind by a contract any separate property which she may possibly thereafter acquire: *Re Shakespeare*, 30 Ch. D. 169; and see *Meager v. Pellew*, 14 Q. B. D. 973; *Palliser v. Gurney*, 19 Q. B. D. 519; *Beckett v. Tasker*, 36 W. R. 158. Where by a settlement executed before the Act, real estate was settled for the separate use of a married woman without power of anticipation, and after coverture the married woman made a promissory note in favour of the plaintiffs, upon which they obtained judgment (the husband being dead), it was held that the settled property was not liable to satisfy the judgment: *Beckett v. Tasker* (*ubi sup.*). As to equitable execution against the separate estate, see *Re Peace & Waller*, 24 Ch. D. 405. The analogy of the Statute of Limitations applies to bar a simple contract claim against the separate estate of a married woman: *Re Lady Hastings' Estate*, 35 Ch. D. 94. A judgment against a married woman in respect of such of her separate estate as she is not restrained from anticipating cannot be enforced by a committal order under the Debtors Act, 1869, on proof that she has since the judgment received as income of her separate estate, subject to restraint on anticipation, a sum sufficient to satisfy the judgment: *Draycott v. Harrison*, 17 Q. B. D. 147; and see *Meager v. Pellew* (*ubi sup.*); *Scott v. Morley* (*ubi sup.*). As to restraint on anticipation, see *Bursill v. Tanner* (*ubi sup.*); *Smith v. Whitlock*, 34 W. R. 414; *Pike v. Fitzgibbon*, 17 Ch. D. 454; *Roberts v. Watkins*, 46 L. J., Q. B. 552; *Re Dixon*, 57 L. T. 94; and Married Women's Property Act, 1882, s. 19.

*Form of Judgment.*—"It is adjudged that the plaintiff recover £        and costs to be taxed against the defendant, such sum and costs to be payable out of the separate property as hereinafter mentioned, and not otherwise; and it is ordered that execution herein be limited to the separate property of the said defendant, not subject to any restraint against anticipation (unless by reason of s. 19 of the Married Women's Property Act, 1882, such property shall be liable to execution notwithstanding such restriction):" *Scott v. Morley*, 20 Q. B. D. 120.

*Costs.*—There is no jurisdiction to order payment of the costs of proceedings improperly instituted out of the income of a trust fund, which a married woman is restrained from anticipating: *Re Glanvill*, 31 Ch. D. 532; but see *Re Andrews*, 30 Ch. D. 159.

*Liability of married woman.*—Since the Act, a married woman is liable on an undertaking as to damages: *Re Prynné*, 53 L. T. 465; *Hunt v. Hunt*, 54 L. J., Ch. 289. A married woman suing alone, and having no separate estate, will not be ordered to give security for costs: *Re Isaac*, 30 Ch. D. 418; and see *Threlfall v. Wilson*, 8 P. D. 18; *Severance v. C. S. S. Association*, 48 L. T. 485; *Pindar v. Robinson*, W. N. (1885), 147. She may, however, be ordered to give security for costs of an appeal: *Weldhen v. Scattergood*, W. N. (1887), 69. As to discovery against a married woman, see *Fendall v. O'Connell*, 29 Ch. D. 899.

*Separate examination.*—Separate examination of a woman married before the Act, under the Settled Estates Act, 1877, is necessary in respect of property her interest in which was acquired prior to the Act of 1882: *Re Harris's Settled Estates*, 28 Ch. D. 171; *Re Arabin's Trust*, 52 L. T. 728; but such examination is not required in the case of a woman married after the commencement of the Act: *Riddell v. Errington*, 26 Ch. D. 220.

*Action by husband against wife.*—A husband can maintain an action against his wife to charge her separate estate for money lent by him to her after marriage, and for money paid by him for her after marriage at her request made before or after marriage: *Butler v. Butler*, 16 Q. B. D. 374.

*Liability of husband.*—A husband may be sued jointly with his wife (or the wife may be sued alone) for torts committed by the wife after marriage: *Seroka v. Kattenburg*, 17 Q. B. D. 177. A husband's liability for his wife's breaches of



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trust extends to breaches of trust arising from her negligence, and is not confined to losses caused by her active misconduct: *Bahin v. Hughes*, 31 Ch. D. 390.

139.

Lunatics, &c.

**17.** Where lunatics and persons of unsound mind not so found by inquisition might respectively before the passing of the principal Act have sued as plaintiffs or would have been liable to be sued as defendants in any action or suit, they may respectively sue as plaintiffs in any action by their committee or next friend according to the practice of the Chancery Division, and may in like manner defend any action by their committees or guardians appointed for that purpose.

**LUNATICS, &c.**—As to proceedings by and against lunatics and persons of unsound mind not so found by inquisition, see Dan. Pr., pp. 116—119, 181—185; Chitt. Arch., pp. 1141—1146; Dan. Forms, pp. 52—60; Chitt. Forms, pp. 559—564.

“*Practice of the Chancery Division.*”—A lunatic sues or defends by the committee of his estate; if there be no committee, he sues by his next friend and defends by a guardian *ad litem*. Before suing or defending a committee should obtain the sanction in lunacy of the Lord Chancellor or Lords Justices of Appeal. A person of unsound mind, not so found, sues by his next friend and defends by a guardian *ad litem*.

*Summary of Rules relating to lunatics, &c.*—As to consent of next friend, see r. 20, *infra*. As to service of a writ of summons, see O. IX., r. 5, *ante*, p. 147. As to service of notice of judgment, see r. 44, *infra*. As to proceeding in default of appearance, see O. XIII., r. 1, *ante*, p. 162. As to applications to discharge an order to carry on proceedings (1) where defendant has a guardian *ad litem*, see O. XVII., r. 6, *post*, p. 197; (2) where he has no such guardian, see O. XVII., r. 7, *post*, p. 197. As to the costs of official solicitor if appointed guardian *ad litem*, see O. LXV., r. 13, *post*, p. 484. As to consents in matters of procedure, see r. 21, *infra*. As to admissions of allegations of fact in the pleadings, see O. XIX., r. 13, *post*, p. 209. As to a special case to which a person of unsound mind is a party, see O. XXXIV., rr. 4, 5, *post*, p. 276.

*Position of next friend.*—As to the effect of a person of unsound mind being found a lunatic after an action has been instituted by a next friend on his behalf, see *Beall v. Smith*, 9 Ch. 85.

*Jurisdiction of Court.*—The Chancery Division has no jurisdiction to appoint a guardian of a person of unsound mind: *Re Bligh*, 12 Ch. D. 364; *Re Brandon's Trusts*, 13 Ch. D. 773; but can give directions for maintenance: *Vane v. Vane*, 2 Ch. D. 124; *Re Bligh (ubi sup.)*; *Re Brandon's Trusts (ubi sup.)*; *Bligh v. O'Connell*, 26 W. R. 311. And the power extends to the application of capital for the purpose: *Re Tuer*, 32 Ch. D. 39; *Re Silva's Trusts*, 36 W. R. 366. But, to found the jurisdiction to order maintenance, there must be money in Court belonging to the person of unsound mind, or the Court must have control over his property by reason of there being an action or some other proceeding pending relating to the property: *Re Grimmett's Trusts*, 56 L. J., Ch. 419.

*Partition Action.*—Under the Partition Act, 1876 (39 & 40 Vict. c. 17), s. 6, a person of unsound mind not so found may sue for partition by a next friend: *Porter v. Porter*, 37 Ch. D. 420; and see *Watt v. Leach*, 26 W. R. 475.

140.

Appointment  
of guardian  
*ad litem* to  
infant.

**18.** An infant shall not enter an appearance except by his guardian *ad litem*. No order for the appointment of such guardian shall be necessary, but the solicitor applying to enter such appearance, shall make and file an affidavit in the Form No. 8 in Appendix A, Part II., with such variations as circumstances may require.

*Effect of Rule.*—This was one of the Rules of May, 1883. Formerly an order of course was required, which this rule dispenses with. It is to be observed that this rule does not extend to the case of a defendant who is lunatic or of unsound mind. In such case an order to assign a guardian *ad litem* must still be obtained. For the form of affidavit mentioned in the rule, see *post*, p. 531.



19. Every infant served with a petition or notice of motion, or summons in a matter, shall appear on the hearing thereof by a guardian *ad litem* in all cases in which the appointment of a special guardian is not provided for. No order for the appointment of such guardian shall be necessary, but the solicitor by whom he appears shall previously make and file an affidavit as in the last Rule mentioned.

See note to last rule.

20. Before the name of any person shall be used in any action as next friend of any infant, or other party, or as relator, such person shall sign a written authority to the solicitor for that purpose, and the authority shall be filed in the Central Office, or in the District Registry, if the cause or matter is proceeding therein.

This rule is taken from 15 & 16 Vict. c. 86, s. 11.

21. In all causes or matters to which any infant or person of unsound mind, whether so found by inquisition or not, or person under any other disability, is a party, any consent as to the mode of taking evidence or as to any other procedure shall, if given with the consent of the Court or a Judge by the next friend, guardian, committee, or other person acting on behalf of the person under disability, have the same force and effect as if such party were under no disability and had given such consent. Provided that no such consent by any committee of a lunatic shall be valid as between him and the lunatic unless given with the sanction of the Lord Chancellor or Lords Justices sitting in Lunacy.

This rule is taken from the Chancery Order of 5 February, 1861. See *Knatchbull v. Fowler*, 1 Ch. D. 604; *Leeming v. Murray*, 28 W. R. 338; *Fryer v. Wiseman*, 24 W. R. 205.

#### IV. Proceedings by or against Paupers.

22. Any person may be admitted in the manner heretofore accustomed to sue or defend as a pauper on proof that he is not worth £25, his wearing apparel and the subject-matter of the cause or matter only excepted.

*Effect of the Rules.*—Before the present Rules the practice in the Chancery Division as to proceedings in *forma pauperis* was governed by C. O. VII., rr. 8—11, and in the Queen's Bench Division, by R. G. H. T., 1853, rr. 121, 122, and R. G. T. T., 1853, r. 28.

The present Rules provide a uniform practice for all Divisions, and raise the amount which excludes their operation from £5 to £25.

As to proceedings by or against paupers, see Dan. Pr., pp. 84—92, 165, 166; Dan. Forms, pp. 33—36; Morgan, pp. 341, 342; Chitt. Arch., pp. 1182—1184; Chitt. Forms, pp. 577—579.

*Mode of application.*—In the Court of Chancery, leave to sue or defend as a pauper was obtained on petition of course. In the case of *Re Lewin*, 33 W. R. 128, an order was made on motion; but *semble*, this was done upon an allegation that petitions of course were obsolete, which is not the case. For forms of petition of course, see Dan. Forms, pp. 33, 35.

*Leave to appeal as a pauper.*—The analogy of these Rules will be followed on such an application: *Re Roberts*, 33 Ch. D. 265.

*Proceedings on the Crown side of the Q. B. D.*—A party to proceedings on the Crown side of the Q. B. D. cannot be admitted to proceed as a pauper: *Mul-tienisen v. Coulson* (2), 21 Q. B. D. 3.

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141.  
Guardian *ad litem* on petitions, &c.

142.  
Authority of next friend.

143.  
Consent by next friend, guardian, &c.

144.  
Paupers.

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rr. 23—30.**

145.

Case before  
counsel.

**23.** A person desirous of suing as a pauper shall lay a case before counsel for his opinion whether or not he has reasonable grounds for proceeding.

This rule only applies to the case of a person desirous of *suing* as a pauper. In the case of a person desirous of *defending* as a pauper nothing but an affidavit of means is required. See Dan. Pr., pp. 165, 166.

146.

Affidavit veri-  
fying case.

**24.** No person shall be permitted to sue as a pauper unless the case laid before counsel for his opinion, and his opinion thereon, with an affidavit of the party, or his solicitor, that the case contains a full and true statement of all the material facts to the best of his knowledge and belief, shall be produced before the Court or Judge or proper officer to whom the application is made, and no fees shall be payable by a pauper to his counsel or solicitor.

Fees.

147.

Court fees.

**25.** A person admitted to sue or defend as a pauper shall not be liable to any court fee.

See *Thomas v. Ellis*, 8 Ch. D. 518.

148.

Assignment  
of counsel or  
solicitor.

**26.** Where a person is admitted to sue or defend as a pauper the Court or a Judge may, if necessary, assign a counsel or solicitor, or both, to assist him, and a counsel or solicitor so assigned shall not be at liberty to refuse his assistance unless he satisfies the Court or Judge that he has some good reason for refusing.

A person who has been admitted to sue as a pauper, but to whom no counsel has been assigned, is entitled to be heard in person: *Tucker v. Collinson*, 16 Q. B. D. 562.

149.

No remunera-  
tion from  
paupers.

**27.** Whilst a person sues or defends as a pauper no person shall take, or agree to take, or seek to obtain from him any fee, profit, or reward, for the conduct of his business in the Court, and any person who takes, or agrees to take, or seeks to obtain any such fee, profit, or reward, shall be guilty of a contempt of Court.

See *Carson v. Pickersgill*, 14 Q. B. D. 859.

150.

Dispaupering  
if fees given.

**28.** If any person admitted to sue or defend as a pauper gives, or agrees to give, any such fee, profit, or reward, he shall be forthwith dispaupered, and shall not be afterwards admitted again in the same cause to sue or defend as a pauper.

As to dispaupering, and the cases in which an order to that effect will be made, see Dan. Pr., pp. 90, 91; *Morgan*, pp. 341, 342. An application to dispauper is made by special motion on notice.

151.

Notices of  
motion, &c.

**29.** No notice of motion shall be served or summons issued, and no petition shall be presented, on behalf of any person admitted to sue or defend as a pauper, except for the discharge of his solicitor, unless it is signed by his solicitor.

152.

Duty of  
pauper's  
solicitor.

**30.** It shall be the duty of the solicitor assigned to a person admitted to sue or defend as a pauper to take care that no notice is served, or summons issued, or petition presented, without good cause.

See *Martinson v. Clowes*, 52 L. T. 706.

**31.** Costs ordered to be paid to a person admitted to sue or defend as a pauper shall, unless the Court or a Judge shall otherwise direct, be taxed as in other cases.

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rr. 31—36.

A successful pauper is only entitled to costs out of pocket, and cannot be allowed anything for remuneration to his solicitor or fees to counsel: *Carson v. Pickersgill*, 14 Q. B. D. 859.

153.  
Taxation of costs.

# V. Administration and Execution of Trusts.

**32.** In any case in which the right of an heir-at-law or the next of kin or a class shall depend upon the construction which the Court or a Judge may put upon an instrument, and it shall not be known or shall be difficult to ascertain who is or are such heir-at-law or next of kin or class, and the Court or Judge shall consider that in order to save expense or for some other reason it will be convenient to have the questions of construction determined before such heir-at-law, next of kin, or class shall have been ascertained by means of inquiry or otherwise, the Court or Judge may appoint some one or more persons to represent such heir-at-law, next of kin, or class, and the judgment of the Court or Judge in the presence of such persons shall be binding upon the heir-at-law, next of kin, or class so represented.

154.  
Persons appointed to represent a class.  
[Cf. O. XVI. r. 9a.]

*Representation of a class.*—See *Re Peppitt*, 4 Ch. D. 230; 2 Seton, 1532, No. 5; *Beale v. Ruston*, W. N. (1878), 179; *Lovesy v. Smith*, 15 Ch. D. 655 (drawing up of the judgment was in this case suspended to enable notice to be given to next of kin who were no parties to the action); *Re Pringle*, 17 Ch. D. 819 (executors authorized at the hearing to represent absent next of kin).

There is no power in a partition action to appoint a person to represent the possible interest of unborn children under legal limitations: *Miles v. Jarvis*, W. N. (1883), 203.

**33.** Any residuary legatee or next of kin entitled to a judgment or order for the administration of the personal estate of a deceased person, may have the same without serving the remaining residuary legatees or next of kin.

155.  
Residuary legatee or next of kin.

This rule and the seven rules which follow reproduce in substance the first eight rules contained in the 15 & 16 Vict. c. 86, s. 42. For cases decided on these sections, see Dan. Pr., pp. 196 *et seq.*; Morgan, p. 342.

**34.** Any legatee interested in a legacy charged upon real estate, and any person interested in the proceeds of real estate directed to be sold, and who may be entitled to a judgment or order for the administration of the estate of a deceased person, may have the same without serving any other legatee or person interested in the proceeds of the estate.

156.  
Legatee of legacy charged on real estate, &c.

**35.** Any residuary devisee or heir entitled to the like judgment or order, may have the same without serving any co-residuary devisee or co-heir.

157.  
Devisee or heir.

**36.** Any one of several cestuis que trusts under any deed or instrument entitled to a judgment or order for the execution of the trusts of the deed or instrument, may have the same without serving any other cestui que trust.

158.  
Cestui que trust.



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159.

Actions for  
waste, &c.

160.

Judgment  
against  
legatees, &c.

161.

Conduct of  
action.

Costs.

162.

Service of  
notice of  
judgment, &c.

**37.** In all cases of actions for the prevention of waste or otherwise for the protection of property, one person may sue on behalf of himself and all persons having the same interest.

**38.** Any executor, administrator, or trustee entitled thereto may have a judgment or order against any one legatee, next of kin, or cestui que trust for the administration of the estate or the execution of the trusts.

*Executors, &c.*—In an action for general administration all the legal personal representatives must be parties: *Latch v. Latch*, 10 Ch. 464; *Dowdeswell v. Dowdeswell*, 9 Ch. D. 294. As to action by a creditor against a residuary legatee who has received assets, after advertisements had been issued under 22 & 23 Vict. c. 35, s. 29, without joining the personal representative of the testator, see *Clegg v. Rowland*, 3 Eq. 368; *Hunter v. Young*, 4 Ex. D. 256. See Dan. Pr., pp. 237 *et seq.*

**39.** The Court or a Judge may require any person to be made a party to any action or proceeding, and may give the conduct of the action or proceeding to such person as he may think fit, and may make such order in any particular case as he may think just for placing the defendant on the record on the same footing in regard to costs as other parties having a common interest with him in the matters in question.

*Concurrent Actions—Conduct.*—See 1 Seton, p. 325; Dan. Pr., p. 1953; *Re Swire*, 21 Ch. D. 647; *Townsend v. Townsend*, 23 Ch. D. 100; *Re McRae*, 25 Ch. D. 16. *Ceteris paribus*, conduct will be given to the plaintiff who first commenced proceedings, even though judgment is first obtained in the action which was commenced latest: *Re Swire, ubi sup.*

**40.** Wherever, in any action for the administration of the estate of a deceased person or the execution of the trusts of any deed or instrument, or for the partition or sale of any hereditaments, a judgment or an order has been pronounced or made—

(a) Under Order XV.;

(b) Under Order XXXIII.;

(c) Affecting the rights or interests of persons not parties to the action;

the Court or a Judge may direct that any persons interested in the estate or under the trust or in the hereditaments, shall be served with notice of the judgment or order; and after such notice such persons shall be bound by the proceedings, in the same manner as if they had originally been made parties, and shall be at liberty to attend the proceedings under the judgment or order. Any person so served may, within one month after such service, apply to the Court or Judge to discharge, vary, or add to the judgment or order.

**SERVICE OF NOTICE OF JUDGMENT.**—See Dan. Pr., pp. 275—282, 996—1002; Dan. Forms, pp. 74—84.

*Provisions as to service.*—As to appearance by party served, see r. 41, *infra*. As to memorandum of service, see rr. 42, 43, *infra*. As to service on infants, &c., see r. 44, *infra*. As to directions for service, in the case of originating summonses, see O. LV., r. 9, *post*, p. 407. As to dispensing with service, see O. LV., r. 35, *post*, p. 415. As to suspending proceedings under the judgment until all necessary parties are served, see O. LV., r. 36, *post*, p. 416.

*Effect of service.*—Service of notice of the judgment appears to have the effect of making the person served a party only in respect of the interest taken by him, and not in respect of any liability to account which he may be under with respect to the estate, for the purpose of enforcing which independent proceedings must be taken: *Walker v. Seligmann*, 12 Eq. 152; but see *Re Rees*, 15 Ch. D.

490. The persons served cannot be treated as co-plaintiffs; and no inquiries can be directed for their benefit which could not have been directed as between co-defendants: *Whitney v. Smith*, 4 Ch. 513; see Dan.Pr., pp. 1001, 1002. Persons interested in an estate under administration to which they have not been made parties, and whose rights and interests may be affected by an order directing accounts and inquiries, are not bound by the proceedings under that order, at any rate where they ought to be served, unless they are served with notice of the order, or an order has been made appointing a member of the class to represent them: *May v. Newton*, 34 Ch. D. 347.

*Mode of service.*—Notice may be served out of the jurisdiction, upon leave obtained for the purpose: *Chalmers v. Laurie*, 10 Hare, App. 27; *Strong v. Moore*, 22 L. J., Ch. 917; and substituted or special service may be directed: Dan. Pr., p. 999; O. LXVII., r. 6, *post*, p. 507.

*Non-appearance of party served.*—In such case, before signing the certificate, it is not necessary that a summons to proceed should be served: *Green v. Measures*, W. N. (1866), 122; but if it is intended at the hearing, on further consideration, to ask for an order personally against the party served, he should be served with notice of the action having been set down on further consideration: *Re Rees*, 15 Ch. D. 490.

*Application to discharge, &c. judgment.*—The rule applies only to cases where service of an order is necessary to make it binding: *Re Youngs*, 30 Ch. D. 421.

*Transmission of Interest.*—Where there is a transmission of the interest of a party bound by service of notice of the judgment, the proper course is to serve the successor with notice of the judgment, not to obtain an order to carry on proceedings under O. XVII. r. 4: *Re Wicks*, W. N. (1888), 9.

41. It shall not be necessary for any person served with notice of any judgment or order, to obtain an order for liberty to attend the proceedings under such judgment or order, but such person shall be at liberty to attend the proceedings upon entering an appearance in the Central Office in the same manner, and subject to the same provisions, as a defendant entering an appearance.

*Effect of Rule.*—Formerly an order of course was required, which this rule dispenses with.

*Costs.*—Entering an appearance under this rule will not necessarily entitle the party appearing to his costs out of the estate; he should obtain a special order for that purpose: *Davies v. Batty*, 21 Ch. D. 830; *Sharp v. Lush*, 10 Ch. D. 468. See also O. LV., rr. 40—43, *post*, pp. 416, 417.

*Vacating appearance.*—Where notice of judgment had been improperly served upon a purchaser who was not affected by the judgment, it was held that the service was irregular, that the purchaser was right in appearing to the notice, that his appearance must be vacated, and that the plaintiffs must pay all costs consequent on the service: *Re Symons*, 54 L. T. 501.

42. A memorandum of the service upon any person of notice of the judgment or order in any action under Rule 40 shall be entered in the Central Office upon due proof by affidavit of such service.

This rule reproduces C. O. XXIII., r. 19. For form, see *post*, p. 595.

43. Notice of a judgment or order served pursuant to Rule 40 shall be entitled in the action, and there shall be endorsed thereon a memorandum in the Form No. 28 in Appendix G.

This rule reproduces C. O. XXIII., r. 20. For form of memorandum, see *post*, p. 595.

44. Notice of a judgment or order on an infant or person of unsound mind not so found by inquisition shall be served in the same manner as a writ of summons in an action.

This rule dispenses with the necessity of a special direction in each case. See O. IX., rr. 4, 5, *ante*, pp. 146, 147, as to service of writ on infants, &c.

Order XVI.  
rr. 40—44.

163.

Order to attend unnecessary.

Appearance.

164.

Entry of memorandum of service.

165.

Form of memorandum.

166.

Service on infants, &c.  
[Cf. O. XVI.  
r. 12 a.]



**Order XVI.  
rr. 45—48.**

167.  
Heir-at-law  
a party.

**45.** In any cause or matter to execute the trusts of a will it shall not be necessary to make the heir-at-law a party, but the plaintiff shall be at liberty to make the heir-at-law a party where he desires to have the will established against him.

This rule is taken from C. O. VII., r. 1.

168.  
Appointment  
of representa-  
tive of de-  
ceased person.

**46.** If in any cause, matter, or other proceeding it shall appear to the Court or a Judge that any deceased person who was interested in the matter in question has no legal personal representative, the Court or Judge may proceed in the absence of any person representing the estate of the deceased person, or may appoint some person to represent his estate for all the purposes of the cause, matter, or other proceeding on such notice to such persons, if any, as the Court or Judge shall think fit, either specially or generally by public advertisement, and the order so made, and any order consequent thereon, shall bind the estate of the deceased person in the same manner in every respect as if a duly constituted legal personal representative of the deceased had been a party to the cause, matter, or proceeding.

This Rule is adapted from 15 & 16 Vict. c. 86, s. 44.

For cases decided under that section, see Dan. Pr., pp. 209—211; Morgan, pp. 345—347. For a foreclosure judgment against a person appointed to represent the estate of a deceased mortgagor, see *Peat v. Gott*, W. N. (1885), 46; see also *Neal v. Barrett*, W. N. (1887), 58. In the case last cited an order for foreclosure absolute was made, although a person appointed under this rule to represent the estate of a second mortgagee was not added to the record as a defendant.

*Mode of Application.*—Application is usually made *ex parte* by motion or summons: Dan. Forms, pp. 64—65.

169.  
Appearance  
on creditor's  
claims against  
estate under  
administra-  
tion.  
[Cf. O. XVI.  
r. 12 b.]

**47.** In any cause or matter for the administration of the estate of a deceased person, no party other than the executor or administrator shall, unless by leave of the Court or a Judge, be entitled to appear either in Court or in Chambers on the claim of any person not a party to the cause or matter against the estate of the deceased person in respect of any debt or liability. The Court or a Judge may direct or give liberty to any other party to the cause or matter to appear, either in addition to or in the place of the executor or administrator, upon such terms as to costs or otherwise as they or he shall think fit.

See *Smith v. Watts*, 22 Ch. D. 1, at p. 12.

## VI. Third Party Procedure.

170.  
Notice to third  
party in cases  
of contribu-  
tion, &c.  
[Cf. O. XVI.  
r. 18.]

**48.** Where a defendant claims to be entitled to contribution, or indemnity over against any person not a party to the action, he may, by leave of the Court or a Judge, issue a notice (hereinafter called the third party notice) to that effect, stamped with the seal with which writs of summons are sealed. A copy of such notice shall be filed with the proper officer and served on such person according to the rules relating to the service of writs of summons. The notice shall state the nature and grounds of the claim, and shall, unless otherwise ordered by the Court or a Judge, be served



within the time limited for delivering his defence. Such notice may be in the form or to the effect of the Form No. 1 in Appendix B, with such variations as circumstances may require, and therewith shall be served a copy of the statement of claim, or if there be no statement of claim, then a copy of the writ of summons in the action.

Order XVI.  
r. 48.

**THIRD PARTY PROCEDURE.**—See S. C. Jud. Act, 1873, s. 24 (3), *ante*, p. 16; Dan. Pr., pp. 269—274; Dan. Forms, pp. 68—73; Chitt. Arch., pp. 416—425; Chitt. Forms, pp. 232—237.

*Effect of present Code of Rules.*—The present third-party rules differ from the Rules of 1875 in three respects:—

1. Under the Rules of 1875 (O. XVI., rr. 17—21) a defendant might bring in a third party in any case; (a) when he claimed to be entitled to contribution or indemnity, or any other remedy or relief over against the third party; or (b) when from any other cause it appeared that a question in the action should be determined not only as between the plaintiff and the defendant, but as between defendant and any other person, or between any or either of them. Under the present Rules the right to bring in a third party is limited to the single case, where the defendant claims to be entitled to contribution or indemnity.
2. Under the Rules of 1875 the object of bringing in the third party was not to enable the defendant to obtain any actual present relief against him, but only to secure a binding decision with a view to future relief, which had to be obtained in subsequent proceedings by the defendant against the third party: *Treleaven v. Bray*, 45 L. J., Ch. 113; *The Carlsburn*, 5 P. D. 59, at p. 62. Under the present Rules power is given to the Court to give judgment for the defendant against the third party, and thus to work out the whole matter in one action.
3. The present Rules expressly provide for the case of a defendant claiming contribution or indemnity against a co-defendant, and enable him to obtain effectual relief. See as to the former practice, *Furness v. Booth*, 4 Ch. D. 586, dissenting from *Shepherd v. Beane*, 2 Ch. D. 223; *Bagot v. Easton*, 11 Ch. D. 392.

*Discretion.*—The exercise of the power is discretionary, and the Court will not bring in the third party if the plaintiff would be prejudiced thereby in the prosecution of his action: *Bower v. Hartley*, 1 Q. B. D. 652; *Associated Home Co. v. Whicheard*, 8 Ch. D. 457; *Wye Valley Ry. Co. v. Hawes*, 16 Ch. D. 489; *Hutchison v. Colorado United Mining Co.*, W. N. (1884), 40.

*Claim for indemnity.*—The claim must arise under a contract of indemnity, express or implied: *Speller v. Bristol Steam Navigation Co.*, 13 Q. B. D. 96. So, where plaintiff sued defendant for breach of covenant to repair, and defendant obtained leave to serve a third-party notice on his sub-lessee, it was held that, as the terms of the covenant to repair must in each case be construed with reference to the age and character of the premises at the time of the demise, the covenant in the underlease could not be construed as a covenant to indemnify the defendant against, or to perform the covenant in the original lease; that the defendant's claim was not one for contribution or indemnity from the third party, and that, therefore, no directions as to trial could be given under rule 52: *Pontifex v. Foord*, 12 Q. B. D. 152. So, in an action by vendor against purchaser and auctioneer for specific performance, where the purchaser alleged that he was induced to purchase by a certain representation made by his co-defendant, and on this ground asked leave to serve him with a notice claiming indemnity, it was held that this was not a case for indemnity within rule 55: *Catton v. Bennett*, 26 Ch. D. 161. See also *Birmingham Land Co. v. L. & N. W. Ry. Co.*, 34 Ch. D. 261; *Tritton v. Bankart*, 56 L. J., Ch. 629; *Johnston v. The Salvage Association*, 19 Q. B. D. 458. The indemnity in respect of which leave to serve the notice is sought may be given after or before action brought: *Edison Co. v. Holland*, 33 Ch. D. 497. In giving leave to serve a notice of claim for contribution or indemnity, the Court will not consider whether the claim is a valid one, but only whether it is *bonâ fide*, and whether, if established, it will result in contribution or indemnity: *Carshore v. N. E. Ry. Co.*, 29 Ch. D. 344.

**Order XVI.  
r. 48.**

*Fourth party.*—In *Fowler v. Knoop*, 36 L. T. 219, it was held that a third party brought in, and having liberty to defend the action, might himself bring in a fourth party from whom he claimed indemnity on the same ground upon which it was claimed from him. In *Walker v. Balfour*, 25 W. R. 511, and *Yorkshire Waggon Co. v. Newport Coal Co.*, 5 Q. B. D. 268, doubts were expressed upon the point. In *Witham v. Vane*, 49 L. J., Ch. 242, however, Fry, J., ordered a fourth party to be brought in. But *semble*, under the present Rules a fourth party cannot be brought in: *Carshore v. N. E. Ry. Co.*, 33 W. R. 420, per Cotton, L. J.

*Married woman.*—A married woman, having no separate estate, cannot be brought in as a third party by her husband: *Jones v. Elderton*, W. N. (1884), 39 but a married woman with separate estate may be brought in by a stranger, and an order made against her separate estate: *Gloucestershire Banking Co. v. Phillips*, 12 Q. B. D. 533.

**APPLICATION: HOW MADE.**—Application for leave to serve a third-party notice may be made by motion or summons (usually the latter): see Dan. Forms, p. 69. The plaintiff must have notice of the application: *Wye Valley Ry. Co. v. Hawes*, 16 Ch. D. 489. The practice, however, does not appear to be uniform. In the Chancery Division the plaintiff is served with the summons or notice of motion, the application being *ex parte* only so far as the third party is concerned. In the Queen's Bench Division leave is obtained without serving the plaintiff, who has no notice until the summons for directions under rule 52. It is submitted that the Chancery practice is (i) the more regular: *Wye Valley Ry. Co. v. Hawes*, *ubi sup.*; *Finlay v. Scott*, W. N. (1884), 8; and (ii) the more convenient; for in the case is one which the Court considers to be outside the rules, expense will be saved by having this determined at the earliest moment.

*Application: when to be made.*—Application should, as a general rule, be made before the time limited for delivery of defence, and, at the latest, before the close of the pleadings: *Birmingham and District Land Co. v. L. & N. W. Ry. Co.* (No. 2), 56 L. T. 702.

*Service.*—The notice is to be served according to the rules relating to the service of writs of summons: see O. IX., *ante*, p. 145.

*Service out of jurisdiction.*—Under the Rules of 1875, it was decided that a third-party notice could be served out of the jurisdiction: *Swansea Shipping Co. v. Duncan*, 1 Q. B. D. 644. Under the present Rules, however, it has been held that such notice cannot be served out of the jurisdiction on a person resident or ordinarily domiciled in Scotland or Ireland: *Speller v. Bristol Steam Navigation Co.*, 13 Q. B. D. 96. Having regard to the case last cited, and to *Re Busfield*, 32 Ch. D. 123, it would seem to be open to great doubt whether there is jurisdiction to allow foreign service of a third-party notice.

*Discharge of order.*—An order giving leave to serve a third-party notice may be discharged, upon the application of the plaintiff: *Corrie v. Allen*, 48 L. T. 464; *The Bianca*, 8 P. D. 91; or of the third party: *Benecke v. Frost*, Q. B. D. 419; *Bower v. Hartley*, 1 Q. B. D. 652; *Horwell v. London Omnibus Co.*, 2 Ex. D. 365. The third party may apply before entering an appearance: see O. XII., r. 30, *ante*, p. 161.

*Non-appearance of a third party.*—See rules 50, 51, *infra*.

*Appearance.*—Directions will be given under rule 52, *infra*.

*Counter-claim.*—A third party when brought in is not in all respects in the position of a defendant, and cannot counter-claim against the plaintiff: *Eden v. Weardale Iron Co.*, 28 Ch. D. 333. Whether he can counter-claim as against the defendant, *quære*: *S. C.*, per Bowen, L. J., at p. 338.

*Defence by third party.*—A third party is entitled to set up, as against the plaintiff's claim, any defence which would have been available to the defendant: *Eden v. Weardale Iron Co.*, 28 Ch. D. 333; and that, even though the defendant may by admission or otherwise have debarred himself from raising any particular defence: *Callender v. Wallingford*, 53 L. J., Q. B. 569.

*Discovery.*—A plaintiff can obtain an order for discovery (*Macalister v. Bishop of Rochester*, 5 C. P. D. 194), or for delivery of interrogatories (*Eden v. Weardale Iron Co.* (No. 2), 34 Ch. D. 223), against a third party who has appeared and



obtained leave to oppose the plaintiff. A third party can obtain an order to interrogate a defendant: *Bates v. Burchell*, W. N. (1884), 108; and where a third party has appeared and obtained leave to oppose the plaintiff he has put himself sufficiently in the position of a defendant to obtain an order against the plaintiff for leave to deliver interrogatories: *Eden v. Weardale Iron Co.* (No. 3), 35 Ch. D. 287. See also O. XXXI., rr. 1, 14, *post*, pp. 251, 260.

Order XVI.  
rr. 48—51.

49. If a person not a party to the action, who is served as mentioned in Rule 48 (hereinafter called the third party), desires to dispute the plaintiff's claim in the action as against the defendant on whose behalf the notice has been given, or his own liability to the defendant, the third party must enter an appearance in the action within *eight days* from the service of the notice. In default of his so doing, he shall be deemed to admit the validity of the judgment obtained against such defendant, whether obtained by consent or otherwise, and his own liability to contribute or indemnify, as the case may be, to the extent claimed in the third party notice. Provided always, that a person so served and failing to appear within the said period of *eight days* may apply to the Court or a Judge for leave to appear, and such leave may be given upon such terms, if any, as the Court or Judge shall think fit.

171.  
Appearance by  
third party.  
Default.

For form of memorandum of appearance, see App. A, Pt. II., No. 5, *post*, p. 531.

For forms of application for leave to appear notwithstanding the time has expired, see Dan. Forms, p. 71; Chitt. Forms, p. 235.

50. Where a third party makes default in entering an appearance in the action, in case the defendant giving the notice suffer judgment by default, he shall be entitled at any time, after satisfaction of the judgment against himself, or before such satisfaction by leave of the Court or a Judge, to enter judgment against the third party to the extent of the contribution or indemnity claimed in the third party notice: provided that it shall be lawful for the Court or a Judge to set aside or vary such judgment upon such terms as may seem just.

172.  
Default by  
third party.  
Judgment  
against  
third party.

For form of judgment against the third party, where he makes default in appearance, and after satisfaction by the defendant of a default judgment against himself, see Chitt. Forms, p. 235.

51. Where a third party makes default in entering an appearance in the action, in case the action is tried and results in favour of the plaintiff, the Judge who tries the action may, at or after the trial, enter such judgment as the nature of the case may require for the defendant giving the notice against the third party: provided that execution thereof be not issued without leave of the Judge until after satisfaction by such defendant of the verdict or judgment against him. And if the action is finally decided in the plaintiff's favour, otherwise than by trial, the Court or a Judge may, on application by motion or summons, as the case may be, order such judgment as the nature of the case may require to be entered for the defendant giving the notice against the third party at any time after satisfaction by the defendant of the amount recovered by the plaintiff against him.

173.  
Default by  
third party.  
Judgment  
on trial of  
action.

For forms of application under this rule, see Dan. Forms, p. 72; Chitt. Forms, p. 236.



Order XVI.  
rr. 52, 53.

174.

Trial as  
between de-  
fendant and  
third party.

Judgment.

**52.** If a third party appears pursuant to the third party notice, the defendant giving the notice may apply to the Court or a Judge for directions, and the Court or Judge, upon the hearing of such application, may, if satisfied that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed, in whole or in part, order the question of such liability, as between the third party and the defendant giving the notice, to be tried in such manner, at or after the trial of the action, as the Court or Judge may direct; and, if not so satisfied, may order such judgment as the nature of the case may require to be entered in favour of the defendant giving the notice against the third party.

*Mode of application.*—Usually by summons; see *Dan. Forms*, p. 73; *Chitty's Forms*, p. 236. The plaintiff is entitled to be heard: *Bower v. Hartley*, 1 Q. B. D. 652; *Horwell v. General Omnibus Co.*, 2 Ex. D. 365.

*Directions given.*—See *Jacobs v. Brown*, W. N. (1884), 23.

*When directions refused.*—Before the Court will give directions under this rule it must be satisfied "that there is a question proper to be tried as to the liability of the third party to make the contribution or indemnity claimed:" *Pontifex v. Foord*, 12 Q. B. D. 152. Directions will not be given after final judgment against the defendant, for it was not intended that an action should go to trial as between the defendant and the third party, when the question between the plaintiff and the defendant had been determined: *Caister v. Chapman*, W. N. (1884), 31. See also *Rich v. Darret*, 28 Sol. J. 513. Whether the rule applies to the case of an unliquidated demand, *quære*: *Bell v. Von Dadelzen*, W. N. (1883), 208.

*Admission of liability.*—If the third party admits his liability to the defendant, the Court will give him liberty to defend the action. If he does not admit the liability, the Court will direct the question of liability to be determined at and immediately after the trial of the action, and will give the third party liberty to appear at the trial and take such part therein as the Judge may then think proper: per Kay, J., *Coles v. C. S. S. Association*, 26 Ch. D. 529. See also *Barton v. L. & N. W. Ry. Co.*, 38 Ch. D. 144. In that case the Court refused to allow the third parties to deliver a defence, the defendants having by their defence raised every point which could be suggested by the third parties.

*Judgment against third party.*—Judgment against a third party who has appeared, but at the hearing of the application for directions declines to state any defence, may be ordered, if the Judge is not satisfied that there is any question proper to be tried as to the liability of the third party. The rule is consistent with S. C. Jud. Act, 1873, s. 24, sub-s. 3, and S. C. Jud. Act, 1875, s. 24, and is not *ultra vires*: *Gloucestershire Banking Co. v. Phillipps*, 12 Q. B. D. 533.

175.

Liberty to  
third party  
to defend.

[Cf. O. XVI.  
r. 21.]

**53.** The Court or a Judge upon the hearing of the application mentioned in Rule 52, may, if it shall appear desirable to do so, give the third party liberty to defend the action, upon such terms as may be just, or to appear at the trial and take such part therein as may be just, and generally may order such proceedings to be taken, documents to be delivered, or amendments to be made, and give such directions as to the Court or Judge shall appear proper for having the question most conveniently determined, and as to the mode and extent in or to which the third party shall be bound or made liable by the judgment in the action.

*Liberty to defend.*—In *Witham v. Vane*, 49 L. J., Ch. 242, the third party was allowed to put in a defence to those portions of the statement of claim which were not covered by the defendant's defence.

*Dismissal of third party.*—See *Schneider v. Batt*, 8 Q. B. D. 701; *The Bianca*, 8 P. D. 91.

*Discovery.*—See rule 48, *supra*, and note thereto.

**54.** The Court or a Judge may decide all questions of costs, as between a third party and the other parties to the action, and may order any one or more to pay the costs of any other, or others, or give such direction as to costs as the justice of the case may require.

**Order XVI.**  
**rr. 54, 55.**

176.

Costs.

*Cases under Rules of 1875.*—See *Dawson v. Shepherd*, 49 L. J., Q. B. 529; *Yorkshire Waggon Co. v. Newport Coal Co.*, 5 Q. B. D. 268; *Hornby v. Cardwell*, 8 Q. B. D. 329; *Piller v. Roberts*, 21 Ch. D. 198. Where a third party succeeded at the trial in reducing the damages below the amount paid into Court, he was not allowed his costs against the plaintiff: *Williams v. S. E. Ry. Co.*, 26 W. R. 352.

*Costs of third and fourth parties.*—Where the action was dismissed with costs as against the defendants, it was held that there was no jurisdiction to order the plaintiff to pay the costs of third and fourth parties who had been brought in: *Witham v. Vane*, 32 W. R. 617.

*Payment by third party.*—Where a third party paid the plaintiff without appearing or giving notice to the defendant, he was ordered to pay the defendant's costs: *Jablochhoff Co. v. McMurdo*, W. N. (1884), 94.

*County Courts Act.*—The County Courts Act, 1867, s. 5, does not apply as between a defendant and a third party: *Bates v. Burchell*, W. N. (1884), 108.

**55.** Where a defendant claims to be entitled to contribution or indemnity against any other defendant to the action, a notice may be issued and the same procedure shall be adopted, for the determination of such questions between the defendants, as would be issued and taken against such other defendant, if such last-mentioned defendant were a third party: but nothing herein contained shall prejudice the rights of the plaintiff against any defendant in the action.

177.  
Contribution,  
&c., against  
co-defendant.

*Effect of Rule.*—This rule removes the doubts which existed under the Rules of 1875, as to the procedure to be adopted where a defendant claimed contribution or indemnity against a co-defendant: see *Furness v. Booth*, 4 Ch. D. 586; *Bagot v. Easton*, 11 Ch. D. 392; *Butler v. Butler*, 14 Ch. D. 329; *Steel v. Dixon*, 42 L. T. 765.

*Issue of notice.*—It is not necessary to obtain leave before issuing the notice, but it is open to the co-defendant to move to have the service of the notice set aside: *Towse v. Loveridge*, 25 Ch. D. 76.

*Directions.*—Where judgment obtained against one defendant, the question of liability of his co-defendant to a claim for indemnity in respect of which a notice had been served under this rule, was ordered to be tried at the hearing of the action: *Flower v. Todd*, W. N. (1884), 47. There is no jurisdiction to determine questions between co-defendants where a notice has been issued under this rule, unless directions have been given under rule 52: *Tritton v. Bankart*, 56 L. J., Ch. 629.

*Contribution.*—Under this rule contribution can be ordered between co-defendants: *Sawyer v. Sawyer*, 28 Ch. D. 595. See *Butler v. Butler*, 14 Ch. D. 329; see also *Bahin v. Hughes*, 31 Ch. D. 390.

*Principal and surety.*—A defendant who is entitled to an indemnity from a co-defendant upon a special agreement is entitled to sign judgment against his co-defendant for the amount of his (the defendant's) liability; before he has actually paid anything in discharge of it: *English and Scottish Trust Co. v. Flatau*, 36 W. R. 238.

## ORDER XVII.

### CHANGE OF PARTIES BY DEATH, ETC.

**Order XVII.**  
**r. 1.**

178.

Effect of death,  
marriage,

**1.** A cause or matter shall not become abated by reason of the marriage, death, or bankruptcy of any of the parties, if the cause of action survive or continue, and shall not become defective by the

w.



**Order XVII.**  
r. 1.

bankruptcy,  
or devolution  
of estate.

[Cf. O. L. r. 1.]

assignment, creation, or devolution of any estate or title *pendente lite*; and, whether the cause of action survives or not, there shall be no abatement by reason of the death of either party between the verdict or finding of the issues of fact and the judgment, but judgment may in such case be entered, notwithstanding the death.

*Effect of Order.*—The present Order adopts in substance the Chancery procedure, which was governed by 15 & 16 Vict. c. 86, s. 52, and C. O. XXXII. See Dan. Pr., pp. 282 *et seq.* It reproduces with some modifications the provisions of R. S. C. 1875, Ord. L. Rule 1 of the former Order applied in terms only to "actions," and a charging order was accordingly held not to be within it: *Finney v. Hinde*, 4 Q. B. D. 102. It was, however, held to apply to a petition: *Re Atkins*, 1 Ch. D. 82. The present rule uses the wider term "cause or matter." See these terms defined by S. C. Jud. Act, 1873, s. 100, *ante*, p. 63. The present rule further provides for the case of death between verdict and judgment when the cause of action does not survive, as, for instance, in libel. This provision is taken from the C. L. P. Act, 1852, s. 139. See as to that section, *Kramer v. Waymark*, L. R., 1 Ex. 241.

**SURVIVAL OF CAUSES OF ACTION, &c.**—There is nothing in the above rule to alter the existing law as to what causes of action do and what do not survive: see *Kirk v. Todd*, 21 Ch. D. 484. As to the survival of actions, see *Phillips v. Homfray*, 24 Ch. D. 439.

*Actions of tort.*—An action for tort survives where the tort injuriously affects the plaintiff's personal estate: *Twygros v. Grant*, 4 C. P. D. 40. So, if the defendant in an action for tort dies, and his estate has profited by the tort, the action survives: *Ashley v. Taylor*, 10 Ch. D. 768. An action for defamation, either of private character or of a person in relation to his trade, comes to an end on the death of the plaintiff; but an action for the publication of a false and malicious statement, causing damage to the plaintiff's personal estate, survives: *Hatchard v. Mège*, 18 Q. B. D. 771. So, too, after the death of the registered owner of a trade-mark, who has commenced an action for an injunction restraining infringement and fraudulent imitation, his representative is entitled to continue the action, on the ground that the cause of action involves damage to the estate of the deceased plaintiff: *Oakey v. Dalton*, 35 Ch. D. 700. Where an action of tort was referred to arbitration by an order made by consent, and with a stipulation that the award should bind the representatives in the case of the death of either party, and the plaintiff died before the award, it was held, that the cause of action, being in tort, died with the plaintiff, and did not pass to his personal representatives, and that the executors were not entitled to be substituted as plaintiffs in place of their testator: *Bowker v. Evans*, 15 Q. B. D. 565.

*Breach of promise of marriage.*—Such an action, where no special damage is alleged, does not survive against the personal representatives of the promisor. The special damage which would cause the right of action to survive must be damage to the property, and not to the person, of the promisee, and must be within the contemplation of both parties at the date of the promise: *Finlay v. Chirney*, 20 Q. B. D. 494.

*Abatement.*—There is nothing in this rule to preserve to any person a right of action which by the ordinary rules of law has passed from him. Thus, on the bankruptcy of a plaintiff, where the right of action is one which passes to the trustee, the action cannot be carried on by the bankrupt, but only by the trustee: *Jackson v. N. E. Ry. Co.*, 5 Ch. D. 844. If, in such a case, there are two trustees, and one refuses to go on, the other may do so, and make his co-trustee a defendant: *Ibid.* Where, in an action for specific performance, the plaintiff filed a petition for liquidation, and a trustee was appointed and no one appeared at the trial, Fry, J., ruled that the action had abated, and ordered it to be struck out: *Eldridge v. Burgess*, 7 Ch. D. 411.

*Death of partner.*—A surviving partner may issue execution on a judgment in favour of the firm: *Davis v. Andrews*, W. N. (1884), 94.

*Action of debt: death of defendant.*—Where a defendant dies during the pendency of an action of debt commenced within six years of the accrual of the cause of action, the plaintiff may, within a reasonable time, commence a new action, notwithstanding that the period of six years has expired. This right is not taken away by this rule: *Swindell v. Bulkeley*, 18 Q. B. D. 250.

*Consolidated actions.*—The rules of this Order do not apply: *Re Wortley*, 4 Ch. D. 180.



2. In case of the marriage, death, or bankruptcy, or devolution of estate by operation of law, of any party to a cause or matter, the Court or a Judge may, if it be deemed necessary for the complete settlement of all the questions involved, order that the husband, personal representative, trustee, or other successor in interest, if any, of such party be made a party, or be served with notice in such manner and form as hereinafter prescribed, and on such terms as the Court or Judge shall think just, and shall make such order for the disposal of the cause or matter as may be just.

See note to rule 4, *infra*.

*Devolution of estate by operation of law.*—A garnishee order produces a devolution by operation of law, so that the judgment creditor may be added as co-plaintiff with the judgment debtor: *Wallis v. Smith*, 51 L. J., Ch. 577.

3. In case of an assignment, creation, or devolution of any estate or title *pendente lite*, the cause or matter may be continued by or against the person to or upon whom such estate or title has come or devolved.

*Assignment pendente lite.*—As to the assignment of the plaintiff's interest, see *Seear v. Lawson*, 16 Ch. D. 121. As to the assignment of the defendant's interest, see *Kino v. Rudkin*, 6 Ch. D. 160; *Campbell v. Holyland*, 7 Ch. D. 166.

The Order applies only to devolutions or assignments *pendente lite*, not after final judgment: *A.-G. v. Birmingham Corporation*, 15 Ch. D. 423. In the case, however, of a foreclosure action, where a party has assigned his interest after an order for foreclosure, the assignee may be made a party: *Campbell v. Holyland*, 7 Ch. D. 166.

4. Where by reason of marriage, death, or bankruptcy, or any other event occurring after the commencement of a cause or matter, and causing a change or transmission of interest or liability, or by reason of any person interested coming into existence after the commencement of the cause or matter, it becomes necessary or desirable that any person not already a party should be made a party, or that any person already a party should be made a party in another capacity, an order that the proceedings shall be carried on between the continuing parties, and such new party or parties, may be obtained *ex parte* on application to the Court or a Judge, upon an allegation of such change, or transmission of interest, or liability, or of such person interested having come into existence.

*Application: how made.*—In the Chancery Division an application under this rule is usually made by petition of course, or by motion of course: see Dan. Pr., p. 290; Dan. Forms, p. 85; *Raffey v. Miller*, 24 W. R. 109; *Walker v. Blackmore*, W. N. (1876), 112; *Crane v. Loftus*, 24 W. R. 93; *Darcy v. Whittaker*, 24 W. R. 244. An order may also be obtained on summons, but it is not usual in practice for such orders to be made in Chambers except in cases where an order of course cannot be obtained. Evidence is required if the application is made by summons, but an order of course is granted on allegation. For forms of allegation, see Dan. Forms, pp. 87, 88. In the Queen's Bench Division the application is made by summons, supported by an affidavit: Chitt. Arch., p. 1032; Chitt. Forms, p. 509.

*Application by person attending proceedings.*—A party served with notice of judgment, and having liberty to attend the proceedings, is in the same position as a party to an action, and may obtain an order of course to revive on the death of the plaintiff: *Burstell v. Fearon*, 24 Ch. D. 126. But an order of course to carry on and prosecute an action obtained by a person who had no liberty to attend proceedings was discharged: *Delany v. Delany*, 27 Sol. J. 418. In case of the transmission of interest of a party served with notice of judgment, the proper practice seems to be to serve the successor with notice of the judgment, and not to obtain an order under this rule: *Re Wicks*, W. N. (1888), 9.

Order XVII.  
rr. 2—4.

179.

Power to add parties.

[O. L. r. 2.]

180.

Continuance by or against new parties.

[O. L. r. 3.]

181.

Order for new parties.

[Cf. O. L. r. 4.]

Or in new capacity.

Application *ex parte*.

**Order XVII.**  
**rr. 4, 5.**

*Counter-claiming defendant.*—On the death of a defendant who has delivered a counter-claim, his representatives, if they wish to prosecute the counter-claim against the plaintiff, must obtain an order of revivor against him. An order of revivor of the original action obtained by the plaintiff against them does not authorize them to prosecute the counter-claim against him: *Andrew v. Aitken*, 21 Ch. D. 175.

*Appeal.*—An order of course to prosecute an appeal obtained by the representative of a deceased appellant is sufficient: *Ranson v. Patton*, 17 Ch. D. 767. Where the respondent to an appeal dies, an order of revivor against his executor should be obtained by the appellant, if he wishes to proceed with the appeal: *Re Knight, Knight v. Gardner*, 84 L. T. (newspaper), 205.

*Discretion of Court.*—An application for order of revivor was refused where the real ground of the application was for leave to appeal against a decree dated many years before: *Fussell v. Dowding*, 27 Ch. D. 237. See also *Curtis v. Sheffield*, 20 Ch. D. 398.

*Marriage.*—Before the Married Women's Property Act, 1882, where a female plaintiff married *pendente lite*, the action was allowed to be carried on in the name of her next friend: *Darcy v. Whittaker*, 24 W. R. 244.

*Death.*—As to the death of a sole defendant, an executor against whom a decree had been made in a creditor's administration action, see *Cash v. Parker*, 12 Ch. D. 293.

*Bankruptcy.*—In *Warder v. Saunders*, 10 Q. B. D. 114, a sole plaintiff became bankrupt, and, the trustee declining to continue the action, the Court made an order staying proceedings. On the bankruptcy of plaintiff, the defendant, wishing to have the action dismissed for want of prosecution, was required to give notice to the trustee: *Wright v. Swindon Ry. Co.*, 4 Ch. D. 164. Where the defendant in an action on a bill of exchange became bankrupt, the Court refused to allow the action to be continued against the trustee, holding that it was a case for proof: *Barter v. Dubeux*, 7 Q. B. D. 413. Trustee of a bankrupt plaintiff was added as co-plaintiff in *Emden v. Carte*, 17 Ch. D. 786.

*Appointment of new trustee in bankruptcy.*—When a trustee in bankruptcy, suing in his official name, is removed, and a new trustee appointed, the new trustee must obtain an order to continue the action: *Pooley's Trustee v. Whetham*, 28 Ch. D. 38.

Where the original defendant, a trustee in bankruptcy, died after notice of trial given, and the official receiver was added as a defendant, but no new notice of trial or notice of motion for judgment was served, and the official receiver delivered no pleadings and did not appear at the hearing, it was held that notice of motion must be served on him, unless his consent to the order was produced: *Johnston v. English*, 55 L. T. 55.

*Lunacy.*—For the case of a party becoming a lunatic during the action, and the committee being permitted to continue the action, see *Re Green*, 48 L. J., Ch. 681.

*Birth of infant interested, pendente lite, after judgment.*—See, for form of order in such case, *Peter v. Thomas-Peter*, 26 Ch. D. 181; and see 2 Seton, p. 1527, Form No. 3. For form of petition of course (framed from the order in *Peter v. Thomas-Peter*), see Dan. Forms, p. 88.

*Costs.*—An executor who obtains an order to carry on proceedings becomes personally liable for the costs of the action: *Boynnton v. Boynnton*, 4 App. Cas. 733. When a party to an action becomes bankrupt, if the trustee in bankruptcy elects to go on with the action, he thereby renders himself liable to the opposite party for the costs which have been already incurred therein: *Borneman v. Wilson*, 28 Ch. D. 53; see also *Watson v. Holliday*, 20 Ch. D. 780. If the action is continued against the bankruptcy trustee he is *prima facie* not liable for costs: Bankruptcy Rules, 1886, r. 108.

*Alteration in title of action.*—See Dan. Pr., p. 295; *Seear v. Lawson*, 16 Ch. D. 121; *Miller v. Huddleston*, W. N. (1881), 171.

182.  
 Service of  
 order.  
 [Cf. O. L. r. 5.]  
 Effect.

5. An order obtained as in the last preceding Rule mentioned shall, unless the Court or Judge shall otherwise direct, be served upon the continuing party or parties, or their solicitors, and also upon each such new party, unless the person making the application



be himself the only new party, and the order shall from the time of such service, subject nevertheless to the next two following Rules, be binding on the persons served therewith, and every person served therewith who is not already a party to the cause or matter shall be bound to enter an appearance thereto within the same time and in the same manner as if he had been served with a writ of summons.

Order XVII.  
rr. 5—10.

6. Where any person who is under no disability or under no disability other than coverture, or being under any disability other than coverture, but having a guardian *ad litem* in the cause or matter, shall be served with such order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within *twelve* days from the service thereof.

This rule is taken from C. O. XXXII., r. 1.

183.  
Application  
to discharge  
order.  
[O. L. r. 6.]  
Time.

7. Where any person being under any disability other than coverture, and not having a guardian *ad litem* in the cause or matter, is served with any order as in Rule 4 mentioned, such person may apply to the Court or a Judge to discharge or vary such order at any time within *twelve* days from the appointment of a guardian *ad litem* for such party, and until such period of twelve days shall have expired such order shall have no force or effect as against such last-mentioned person.

This rule is taken from C. O. XXXII., r. 1. As to guardians *ad litem*, see O. XVI., r. 18, *ante*, p. 182.

184.  
In case of  
disability  
where no  
guardian *ad  
litem*.  
[O. L. r. 7.]

8. When the plaintiff or defendant in a cause or matter dies, and the cause of action survives, but the person entitled to proceed fails to proceed, the defendant (or the person against whom the cause or matter may be continued) may apply by summons to compel the plaintiff (or the person entitled to proceed) to proceed within such time as may be ordered: and in default of such proceeding, judgment may be entered for the defendant, or, as the case may be, for the person against whom the cause or matter might have been continued; and in such case, if the plaintiff has died, execution may issue as in the case provided for by Order XLII., Rule 23.

This rule is taken from s. 92 of the C. L. P. Act, 1854. For the rule referred to, see *post*, p. 345.

185.  
Procedure  
where party  
entitled fails  
to proceed.

9. Where any cause or matter becomes abated or in the case of any such change of interest as is by this Order provided for, the solicitor for the plaintiff or person having the conduct of the cause or matter, as the case may be, shall certify the fact to the proper officer, who shall cause an entry thereof to be made in the Cause-Book opposite to the name of such cause or matter.

This rule is taken from C. O. XXI., r. 7.

186.  
Abatement to  
be certified.

10. Where any cause or matter shall have been standing for one year in the Cause-Book marked as "abated," or standing over generally, such cause or matter at the expiration of the year shall be struck out of the Cause-Book.

This rule is taken from C. O. XXI., r. 8.

187.  
Abated cause  
to be struck  
out.

*Cause struck out.*—If a cause has been struck out under this rule and is re-entered, the previous notice of trial is no longer in force: *Le Blond v. Curtis*, 52 L. T. 574.



Order XVIII.  
r. 1.

## ORDER XVIII.

## JOINDER OF CAUSES OF ACTION.

188.

When allowed.

[O. XVII.

r. 1.]

1. Subject to the following Rules of this Order, the plaintiff may unite in the same action several causes of action, but if it appear to the Court or a Judge that any such causes of action cannot be conveniently tried or disposed of together, the Court or Judge may order separate trials of any of such causes of action to be had, or may make such other order as may be necessary or expedient for the separate disposal thereof.

This Order is the repealed Order XVII. with merely verbal alterations.

*Limiting scope of actions: former practice.*—Before the Judicature Acts two methods of limiting the scope of an action were in use—one in the Common Law Courts, the other in the Court of Chancery. At Common Law the matter was affected by Rules of a highly technical character, relating to forms of action. The C. L. P. Act, 1852, s. 41, authorised the joinder of any causes of action in one action, except replevin and ejectment. The restriction that remained was this: all the relief claimed in any action must be claimed by and against the same parties, and in the same rights. This Common Law doctrine as to parties is swept away by the earlier rules of O. XVI., *ante*, p. 172. The Court of Chancery adopted a system of limitation founded upon consideration of the subject-matter. It forbade multifariousness, that is, the introduction of separate and distinct objects into one suit. This principle is, in terms, abolished by the present rule: *Cox v. Barker*, 3 Ch. D. 359.

*Joinder of causes of action.*—If, then, the Common Law mode of limitation by reference to parties, and the Chancery mode of limitation by reference to subject-matter, be both gone, is there any restriction left, other than the discretion given to the Court under rules 1, 8 and 9 of this Order? Or, subject to that discretion, may any number of persons as plaintiffs sue any number of persons as defendants, and then set up in the action any claims, however unconnected with one another, which any of the plaintiffs can make against any of the defendants? The question is not free from difficulty. But its solution may, perhaps, be facilitated by construing the various rules bearing upon the question with careful reference to the subject-matter with which they purport to deal, and the context in which they occur. O. XVI. deals with parties to actions, not with the subject-matter of actions. It presupposes an action about to be instituted in the manner directed by earlier Orders. It presupposes, therefore, a cause of action, that is to say, a set of facts which give or may give to some one a right to legal relief against some one else. And the Order proceeds to say:—(rule 1) that all persons may be joined as plaintiffs who claim *relief* jointly, severally, or in the alternative; and (rule 4), all persons may be made defendants against whom any *relief* is claimed, jointly, severally, or in the alternative. Rule 5 of that Order, it is true, says that the defendants need not all be interested as to all the relief prayed, *or every cause of action included* in the action. But the words “cause of action” have been used in more senses than one, and the sense must often be gathered from the context. Sometimes they mean a fact; but sometimes, also, a legal relation arising from that fact. Thus, in *Child v. Stenning*, cited below, the fact giving a right of action against either defendant was the same, viz., the entry upon the plaintiff’s land. But the causes of action were different; against one it was trespass, against the other breach of contract. Having regard to the context, “cause of action” in the rule in question is perhaps used in the latter sense. If this be so, then, as far as O. XVI. is concerned, there seems to be no question of bringing several transactions into the action, but only of bringing parties in, with reference to their right or liability to relief by reason of a given set of facts. Thus, a libel is published, reflecting upon eight people. This gives each of the eight a right to relief, though not necessarily the same relief. Therefore they may all be plaintiffs: *Booth v. Briscoe*, 2 Q. B. D. 496. Two firms connected in business write trade libels concerning the plaintiff to each other. Each firm circulates the letters of the other. They may both be made defendants: *Desilla v. Schunks & Co.*, W. N. (1880), 96. A contract is made and broken. This gives a right to relief against the principal for whom it was made, if the agent was authorised

to make it; against the agent, if he was not. Therefore both may be made defendants: *Honduras Ry. Co. v. Lefevre*, 2 Ex. D. 301. A trespass is committed. This gives a right to relief against the trespasser, or against the person who has covenanted for quiet enjoyment, according as the fact may turn out. Both may be made defendants: *Child v. Stemming*, 5 Ch. D. 695. A bill of exchange is dishonoured. The holder is entitled to relief against acceptor, drawer, and indorser, and may therefore join them as defendants: O. XVI., r. 6, *ante*, p. 175.

Order XVIII.  
rr. 1, 2.

*Effect of present Order.*—Order XVIII. purports to deal with an entirely different subject. It has to do not with the selection of *parties*, but with the introduction of *subject-matters* into an action: and in this Order alone, it would seem, we must look for authority to combine different subject-matters in one action. Accordingly, the phraseology is changed. The rules no longer speak of “relief,” but of “causes of action or claims.” And, rule 1 of this Order being taken with slight modification from s. 41 of the C. L. P. Act, 1852, the words “cause of action” ought to receive the same construction that they received in that section: see *Bustros v. White*, 1 Q. B. D. 423. That is to say, the rule must be taken to include not only different legal relations arising out of the same transaction, but separate and independent transactions. Then the rule says that “the plaintiff may unite in the same action several causes of action.” So far as concerns plaintiffs, in the several causes of action, this rule seems clearly to contemplate identity of parties. As to defendants, nothing is expressed. But “causes of action,” in an order dealing not with parties but with subject-matters, may well be read “causes of action between the same parties.” And this view is strengthened by the fact that the following rules go on to provide expressly for cases in which claims not strictly between the same parties, or between the same parties but not in the same right, may be joined. In one instance, that of joint and several claims by plaintiffs, they are expressly limited to those against the same defendant (r. 6).

*Result.*—The reasoning may be summed up thus: O. XVI., dealing with *parties*, assumes an ascertained *subject-matter*. O. XVIII., dealing with *subject-matters*, assumes ascertained *parties*. There must, therefore, be either identity of *subject-matter*, in which case O. XVI. gives ample liberty in the choice of *parties*; or identity of *parties*, in which case O. XVIII. gives a like liberty in the choice of *subject-matters*. See this passage cited and approved in *Smith v. Richardson*, 4 C. P. D. at 116. In that case the purchaser of goods gave a bill for the prices, which was dishonoured. The vendor of the goods and the holder of the bill both sued the purchaser in one action, one claiming for the price, the other claiming on the bill. The claim was held embarrassing.

*Alternative causes of action.*—It is clear that under this rule a plaintiff may join two separate alternative causes of action against the same defendant: *Bagot v. Easton*, 7 Ch. D. 1; but where the cause of action against one defendant is totally disconnected with that against the other defendant, except so far as it arises out of an incident in the same transaction, there is a misjoinder, and it is not the case contemplated by this rule which authorizes the joinder not of several actions against distinct persons, but of several causes of action: *Burstell v. Beyfus*, 26 Ch. D. 35. As to the hearing where alternative relief is claimed, see *Child v. Stemming*, 7 Ch. D. 413; 11 Ch. D. 82. A claim for inconsistent alternative relief by different plaintiffs will be disallowed as embarrassing: *Smith v. Richardson*, 4 C. P. D. 112.

189.

2. No cause of action shall, unless by leave of the Court or a Judge, be joined with an action for the recovery of land, except claims in respect of mesne profits or arrears of rent or double value in respect of the premises claimed, or any part thereof, and damages for breach of any contract under which the same or any part thereof are held or for any wrong or injury to the premises claimed.

Action for recovery of land.  
[Cf. O. XVII. r. 2.]

Provided that nothing in this Order contained shall prevent any plaintiff in an action for foreclosure or redemption from asking for or obtaining an order against the defendant for delivery of the possession of the mortgaged property to the plaintiff on or after the order absolute for foreclosure or redemption, as the case may be, and such an action for foreclosure or redemption and for such

Claim for possession in action for foreclosure, &c.



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r. 2.

delivery of possession shall not be deemed an action for the recovery of land within the meaning of these Rules.

Provided also, that in case any mortgage security shall be foreclosed by reason of the default to redeem by any plaintiff in a redemption action, the defendant in whose favour such foreclosure has taken place may by motion or summons apply to the Court or a Judge for an order for delivery to him of possession of the mortgaged property, and such order may be made thereupon as the justice of the case shall require.

The proviso was added by r. 6 of R. S. C., Dec., 1885. See as to actions of foreclosure before the proviso was added, *Tawell v. Slate Co.*, 3 Ch. D. 629; *Wood v. Wheeler*, 22 Ch. D. 281; *contra*, *Harlock v. Ashberry*, 19 Ch. D. 539; *Pugh v. Heath*, 7 App. Cas. 235; *Hoar v. Loe*, W. N. (1884), 241.

*Leave: how and when obtained.*—The usual practice is to apply at Chambers without a summons before the issue of the writ; in the Chancery Division the Chief Clerk usually requires an opinion of counsel that the claims can be properly joined. It was decided in *Re Pilcher*, 11 Ch. D. 905, that leave must be applied for before writ issued, and in *Musgrave v. Stevens*, W. N. (1881), 163, it was said that special circumstances were required to justify an amendment of the writ after service by joining another cause of action. But see *Rushbrooke v. Farley*, 52 L. T. 572, where leave was given after appearance. Leave was refused, after issue joined and action set down for trial: *Clark v. Wray*, 31 Ch. D. 68. See, for the practice, Dan. Pr., pp. 324, 325; Dan. Forms, pp. 129, 130; Chitt. Arch., pp. 1207, 1208; Chitt. Forms, p. 583.

*Effect of appearance.*—Where the writ was indorsed with a claim for the recovery of land and also for debt (without leave), and the defendant entered an appearance, and applied to strike out one or other of such claims, the defendant was held to be too late, as he had taken a "fresh step" within O. LXX., r. 2: *Mulckern v. Doerks*, 53 L. J., Q. B. 526. See, too, *Re Derbon*, 58 L. T. 519. But where the plaintiff, without leave, joined a claim for recovery of land with other claims, and by his statement of claim altered his claim for relief by omitting the claim for recovery of land, and defendant by his defence raised the objection that the writ was issued without leave, the C. A. refused to strike out the defence as embarrassing: *Wilmott v. Freehold House Co.*, 51 L. T. 552.

*Cases.*—An action "to establish title to land," not claiming possession, is not an action for the recovery of land within this rule: *Gledhill v. Hunter*, 14 Ch. D. 492. Leave has been given to join with an action for recovery of land a claim for delivery up and cancellation of a deed relating to the land and for other relief: *Cook v. Enchmarsh*, 2 Ch. D. 111; for a receiver: *Allen v. Kennet*, 24 W. R. 845; for administration where the plaintiff was both heir-at-law and one of the next of kin of an intestate: *Kitching v. K.*, 24 W. R. 901; for conveyance of property vested in defendant: *Manisty v. Kenealy*, 24 W. R. 918; for damages for trespass and assault: *Dennis v. Crompton*, W. N. (1882), 121. In an action for the recovery of land, where the defendant set up an agreement for a tenancy, the plaintiff was allowed to amend the indorsement on the writ by adding a claim for a valuation: *Rushbrooke v. Farley*, 52 L. T. 572.

A plaintiff cannot claim damages against defendant as a trespasser, and mesne profits against him as a tenant: *Brandreth v. Shears*, W. N. (1883), 89.

A claim for quiet possession, and for an injunction to restrain interference with quiet enjoyment, may be combined without leave: *Kendrick v. Roberts*, 30 W. R. 365. So also a claim to establish title to land, a claim for possession, and a claim for arrears of rent: *Gledhill v. Hunter*, 14 Ch. D. 492.

*Foreclosure action.*—Leave to join in an action for foreclosure a claim for recovery of possession of the mortgaged property from the original mortgagor (who was a liquidating debtor, and whose trustee had sold the equity of redemption), was refused: *Sutcliffe v. Wood*, 53 L. J., Ch. 970. But the Court has jurisdiction in a foreclosure action to order delivery of possession where possession is asked, not against a third party, but against the mortgagor, notwithstanding that the plaintiff has not asked for possession either in the writ or statement of claim: *Salt v. Edgar*, 54 L. T. 374; and see *Craven Bank v. Hartley*, W. N. (1886), 189; *Lacon v. Tyrrell*, 56 L. T. 483; *Best v. Applegate*, 37 Ch. D. 42. Delivery of possession can be ordered, even after an order for foreclosure absolute: *Keith v. Day*, W. N. (1888), 194.



*Form of order.*—The minutes of an order in a mortgagee's action where possession is claimed, should contain a direction that, in default of defendant redeeming, he should deliver up possession of the mortgaged premises to the plaintiff, inasmuch as the order for possession is a conditional order, like an order for foreclosure; and requires to be made absolute like a foreclosure order: *Williamson v. Burrage*, 56 L. T. 702. If the order is not made in this form, it would seem that the defendant must be served with notice of motion for possession: *Best v. Applegate* (*ubi sup.*). If, however, the order *nisi* provides for possession in default of redemption, the order absolute for possession can be made without notice to the mortgagor.

*Counter-claims.*—The rule applies to counter-claims: *Compton v. Preston*, 21 Ch. D. 138.

3. Claims by a trustee in bankruptcy as such shall not, unless by leave of the Court or a Judge, be joined with any claim by him in any other capacity.

Compare ss. 113, 114 of the Bankruptcy Act, 1883.

4. Claims by or against husband and wife may be joined with claims by or against either of them separately.

5. Claims by or against an executor or administrator as such may be joined with claims by or against him personally, provided the last-mentioned claims are alleged to arise with reference to the estate in respect of which the plaintiff or defendant sues or is sued as executor or administrator.

*Cases.*—Whether an executor, on the one hand, ought to sue, and on the other hand, ought to be sued, as such, or in his personal capacity, sometimes turns upon very fine distinctions. See *Ashby v. Al.*, 7 B. & C. 441; *Corner v. Shew*, 3 M. & W. 350; *Bolingbroke v. Kerr*, L. R., 1 Ex. 222; *Moseley v. Rendell*, L. R., 6 Q. B. 338; *Abbot v. Parfitt*, *ibid.* 346. Great inconvenience occasionally arose from inability to join in the Common Law Courts claims by or against an executor in his personal and in his representative character. This rule removes the difficulty. See *Padwick v. Scott*, 2 Ch. D. 736, at p. 743.

This rule, it seems, does not apply to counter-claims: *Macdonald v. Carrington*, 4 C. P. D. 28.

6. Claims by plaintiffs jointly may be joined with claims by them or any of them separately against the same defendant.

See note to rule 1, and *Johnson v. Burgess*, 47 L. J., Ch. 552.

7. The last three preceding Rules shall be subject to Rules 1, 8, and 9 of this Order.

8. Any defendant alleging that the plaintiff has united in the same action several causes of action which cannot be conveniently disposed of together, may at any time apply to the Court or a Judge for an order confining the action to such of the causes of action as may be conveniently disposed of together.

*Effect of Rule.*—Rule 1 of this Order gives power to "order separate trials of any of such causes of action, or make such other order as may be necessary or expedient for the separate disposal thereof." This and the next rule speak of an order "confining the action to such of the causes of action as may be conveniently disposed of together," and ordering other causes of action "to be excluded." If these latter rules are to be construed strictly, it seems probable that, except in some very extreme case, the former and less stringent power will be exercised, rather than the latter and more stringent. Possibly, however, the first rule (which, it may be observed, is taken from the original schedule to the Act of 1873) may be regarded as the governing rule; and the latter rules may be read as merely providing the machinery for giving effect to it. If so, an order confining the action may perhaps be read as meaning no more than an order under rule 1; and the order for amending the proceedings mentioned in rule 9 may

Order XVIII.  
rr. 2—8.

190.  
Trustee in  
bankruptcy.  
[O. XVII.  
r. 3.]

191.  
Husband and  
wife.  
[O. XVII. r.  
4.]

192.  
Executor or  
administrator.  
[O. XVII. r.  
5.]

193.  
Joint and  
several claims.  
[O. XVII. r.  
6.]

194.  
Power to  
order separate  
trial.  
[Cf. O. XVII.  
r. 7.]

195.  
Application  
to strike out  
causes of  
action.  
[O. XVII. r.  
8.]

**Order XVIII.** be little more than an order for separate records, under s. 41 of the C. L. P. Act, 1852.  
**rr. 8, 9.**

196.  
**Order to strike** out causes of action.  
[**Cf. O. XVII.** r. 9.]  
**9.** If, on the hearing of such application as in the last preceding Rule mentioned, it shall appear to the Court or a Judge that the causes of action are such as cannot all be conveniently disposed of together, the Court or Judge may order any of such causes of action to be excluded, and consequential amendments to be made, and may make such order as to costs as may be just.

See *Smith v. Richardson*, 4 C. P. D. 112. See also O. XIX., r. 27, *post*, p. 212, and note thereto.

**Order XIX.**  
**rr. 1, 2.**

ORDER XIX.

PLEADING GENERALLY.

197.  
**New rules of** pleading.  
[**Cf. O. XIX.** r. 1.]

**1.** The following rules of pleading shall be used in the High Court of Justice.

*Definition of terms.*—By S. C. Jud. Act, 1873, s. 100, *ante*, p. 63, “pleading” includes “any petition or summons;” and also “the statements in writing of the claim or demand of any plaintiff, and of the defence of any defendant thereto, and of the reply of the plaintiff to any counter-claim of a defendant,” and by the same section “Rules of Court” include “forms.”

*Effect of Order.*—This Order deals with the contents of pleadings generally. Mode of service and procedure in relation to pleadings are dealt with by subsequent Orders. For a tabular summary of the material provisions of the Rules relating to pleadings, see *Dan. Forms*, pp. 190—192.

198.  
**Pleading.**  
[**Cf. O. XIX.** r. 2.]  
**Claim.**

**2.** The plaintiff shall, subject to the provisions of Order XX., and at such time and in such manner as therein prescribed, deliver to the defendant a statement of his claim, and of the relief or remedy to which he claims to be entitled. The defendant shall, subject to the provisions of Order XXI., and at such time and in such manner as therein prescribed, deliver to the plaintiff his defence, set-off, or counter-claim (if any), and the plaintiff shall, subject to the provisions of Order XXIII., and at such time and in such manner as therein prescribed, deliver his reply (if any) to such defence, set-off, or counter-claim. Such statements shall be as brief as the nature of the case will admit, and the taxing officer in adjusting the costs of the action shall at the instance of any party, or may without any request, inquire into any unnecessary prolixity, and order the costs occasioned by such prolixity to be borne by the party chargeable with the same.

**Defence.**

**Reply.**  
**Costs of** prolixity.

*References to Rules as to delivery of pleadings.*—As to delivery of pleadings, see r. 11, *infra*, and O. LXVII., rr. 2—7, *post*, pp. 507, 508. For time for delivering claim, see O. XX., *post*, p. 214. For time for delivering defence, see O. XXI., *post*, p. 218. As to counter-claims, see the next rule, and O. XXI., rr. 11, 12, 15—18, *post*, pp. 219—222. For time for reply, see O. XXIII., *post*, p. 229.

For provisions dispensing with a statement of claim and as to costs of an unnecessary statement of claim, see O. XX., r. 1 (a), and (c), *post*, pp. 214, 215.

*Reply.*—The plaintiff’s right of reply is general. He is not limited to a mere traverse; but may traverse, or confess and avoid, or both: *Hall v. Eve*, 4 Ch. D. 341; overruling *Earp v. Henderson*, 3 Ch. D. 254; and *Breslauer v. Barwick*, 24 W. R. 901, decided on the repealed Rules.

*Prolixity in pleading.*—As to disallowance of costs occasioned by prolixity, see r. 5, *infra*, and O. LXV., r. 27 (20), *post*, p. 492.

The power to disallow costs does not, however, take away the power of striking out any part of a pleading on the ground of excessive prolixity: *Davy v. Garrett*, 7 Ch. D. 473.



3. A defendant in an action may set off, or set up, by way of counter-claim against the claims of the plaintiff, any right or claim, whether such set-off or counter-claim sound in damages or not, and such set-off or counter-claim shall have the same effect as a cross action, so as to enable the Court to pronounce a final judgment in the same action, both on the original and on the cross claim. But the Court or a Judge may, on the application of the plaintiff before trial, if in the opinion of the Court or Judge such set-off or counter-claim cannot be conveniently disposed of in the pending action, or ought not to be allowed, refuse permission to the defendant to avail himself thereof.

Order XIX.  
r. 3.

199.

Set-off and  
counter-claim.  
[Cf. O. XIX.  
r. 3.]

**COUNTER-CLAIMS.**—As to counter-claims, see S. C. Jud. Act, 1873, s. 24, sub-s. 3, *ante*, p. 16: Dan. Pr., pp. 512—520; Chitt. Arch., pp. 304—311. As to judgment for defendant for the balance found due on a set-off or counter-claim, see O. XXI., r. 17, *post*, p. 221. For tabular summary of the material provisions of the Rules relating to counter-claims, see Dan. Forms, pp. 235, 236.

*Effect of the Rule.*—Under the corresponding rule [R. S. C., 1875, O. XIX., r. 3, which differed from the present rule merely in providing that a set-off or counter-claim should have the same effect as a statement of claim in a cross action] it was held the rule was not intended to give rights against third parties which did not exist before; but that it was a rule of procedure designed to prevent the necessity of bringing a cross-action in all cases where the counter-claim may conveniently be tried in the original action: *Re Milan Tramways Co.*, 22 Ch. D. 122 (affirmed 25 Ch. D. 587).

*A. Subject-matter of set-off, &c.*—In the case of pecuniary claims, the power of set-off is no longer, as was formerly the case, limited to debts. Claims for unliquidated damages may now be set off or set up against debts, and debts against damages, and damages against damages. See *Gray v. Webb*, 21 Ch. D. 802. Thus, in *Lees v. Patterson*, 7 Ch. D. 866, which was an action for an account, the defendant was allowed to counter-claim for damages for arrest under a writ of *ne exeat regno* improperly obtained; and in *Besant v. Wood*, 12 Ch. D. 605, an action by a husband to enforce a separation deed was met by a counter-claim for a judicial separation. As to a counter-claim in an Admiralty action for limitation of liability under the Merchant Shipping Act, 1862, see *The Clutha*, 35 L. T. 36; or limitation of liability may be claimed as an equitable defence: *Wahlberg v. Young*, 24 W. R. 846.

*Must be for matters for which an action would lie.*—A set-off or a counter-claim can only be of matters for which an action would lie. Therefore, a debt alleged to have been incurred by an infant, and not ratified under Lord Tenterden's Act, could not be set off: *Raveley v. R.*, 1 Q. B. D. 460. So in an action by an administrator for a balance due to the intestate, it was sought to set up in answer a promissory note on which the intestate was liable, but which matured after his death, and an order had been made, in the Chancery Division, for the administration of the intestate's estate. It was held, that the matter relied upon was not good as a set-off, because not within the Statutes of Set-Off; nor as a counter-claim, because, before the Judicature Act, the Court of Chancery would have restrained an action in respect of it: *Newell v. National Provincial Bank*, 1 C. P. D. 496. See, also, *Birmingham Estates Co. v. Smith*, 13 Ch. D. 506; see, too, *Gathercole v. Smith*, 17 Ch. D. 1, at p. 4.

In an action for calls by the liquidator of a company in liquidation a claim by the shareholder against the company cannot be pleaded either as a set-off or counter-claim: see *Re Whitehouse*, 9 Ch. D. 595; *Government, &c., Co. v. Dempsey*, 50 L. J., Q. B. 199. In an action for rent a counter-claim for compensation under the Agricultural Holdings Act, 1883, cannot be set up: *Gas Co. v. Holloway*, 52 L. T. 434; for by s. 8 such claim must be referred to arbitration.

*B. Extent.*—A cross-claim by a defendant may not merely be used by way of set-off as an answer to the plaintiff's claim; a defendant may, by way of counter-claim, claim in the original action any relief against the plaintiff which he could formerly have sought by a cross action at law, or suit in equity; so that there may be a judgment in his favour for a sum of money, if the balance of pecuniary claim prove to be in his favour; or any other remedy or relief may be adjudged to him to which he may show himself to be entitled. It is no objection to the right to set up a counter-claim that it will not equal in amount the claim



**Order XIX.**  
**r. 3.**

of the plaintiff: *Mostyn v. West Mostyn Co.*, 1 C. P. D. 145. Where two plaintiffs jointly sue a defendant, he may, by way of counter-claim, set up claims which he alleges that he has against the two plaintiffs severally: *M. S. & L. Ry. v. Brooks*, 2 Ex. D. 243. Where a debtor is sued by the assignee of a chose in action he may counter-claim for damages for breach of contract by the assignor, provided claim and counter-claim relate to the same matter, but in such cases the amount recoverable under the counter-claim must be limited to the amount of the claim: *Young v. Kitchen*, 3 Ex. D. 127; but see *Pellas v. Neptune Insurance Co.*, 5 C. P. D. 34, where, however, the case turned on the true construction to be put on the Policies of Marine Assurance Act, 1868. In an action of trover, and for goods sold and delivered, a defendant cannot set-off a claim for unliquidated damages which he has against a third party on another transaction, although the third party happens to be the plaintiff's principal: *Tagart v. Marcus*, 36 W. R. 469.

*C. New parties or co-defendants.*—Not only may relief be sought against the plaintiff by way of counter-claim, but also relief relating to or connected with the original subject-matter of the action may be sought against any other person, whether already a party to the action or not. Where, however, it is sought to bring in a third party as defendant to a counter-claim, or to charge a co-defendant by means of a counter-claim, two conditions must be complied with: First, by the express terms of S. C. Jud. Act, 1873, s. 24 (3), the relief sought by way of counter-claim must relate to, or be connected with, the original subject of the action: *Padwick v. Scott*, 2 Ch. D. 736; *Barber v. Blaiberg*, 19 Ch. D. 473. Secondly, by reason of the construction put upon the Act and Rules, relief cannot be sought by way of counter-claim either against a co-defendant, or against a third party, in which the plaintiff is not interested: *Treleven v. Bray*, 1 Ch. D. 176; *Furness v. Booth*, 4 Ch. D. 586; *Warner v. Twining*, 24 W. R. 536; *Dear v. Swarder*, 4 Ch. D. 476; *Harris v. Gamble*, 6 Ch. D. 748. But if these conditions be complied with, it is immaterial that the third party brought in as defendant to the counter-claim could not have joined as a plaintiff in the original claim: *Turner v. Hednesford Gas Co.*, 3 Ex. D. 145. In *Evans v. Buck*, 4 Ch. D. 432, Jessel, M. R., held that a person could not be brought in as defendant to a counter-claim against whom there would be a right to relief only in one of two inconsistent alternatives. The defendant cannot counter-claim for relief either against the plaintiff or a third party in the alternative: *Central African Trading Co. v. Grove*, 48 L. J., Ex. 510. A third party so brought in cannot counter-claim against the defendant who brought him in: *Street v. Gover*, 2 Q. B. D. 498; but see *Eden v. Weardale Iron Co.*, 28 Ch. D. 333. A plaintiff may, in his reply to a counter-claim of the defendant, counter-claim in respect of a cause of action accrued after the issue of the writ, but arising at the same time and out of the same transaction as the counter-claim of the defendant: *Toke v. Andrews*, 8 Q. B. D. 428.

*Discretion.*—The Court in the exercise of its discretion may disallow a set-off or counter-claim which cannot be conveniently disposed of in the pending action. So, where a defendant set up a counter-claim which from its nature was calculated to delay the plaintiff's action, the counter-claim was directed to be struck out: *Gray v. Webb*, 21 Ch. D. 802. Under this rule the plaintiff who wishes to have a counter-claim disallowed, is directed to apply "before trial;" while under O. XXI., r. 15, *post*, p. 220, he is directed to apply "before reply." The effect of this discrepancy, is not clear. An appeal lies from the exercise of this discretion, but will only be allowed in a very strong case: *Huggons v. Tweed*, 10 Ch. D. 359, at p. 363. For examples of counter-claims which in the discretion of the Court have been allowed or disallowed, see O. XXI., r. 15, *post*, p. 220, and note thereto.

*Application to disallow set-off, &c.: how made.*—By motion or summons (usually the latter): see Dan. Pr., pp. 515, 516; Dan. Forms, p. 237; Chitt. Arch., p. 310; Chitt. Forms, p. 161.

In *Lynch v. Macdonald*, 37 Ch. D. 227, an application made by the plaintiff at the hearing of an appeal for an order that a counter-claim might be tried separately, was refused, on the ground that the plaintiff ought to have applied before reply to have the counter-claim tried separately under O. XXI., r. 15, or before trial to have it disallowed under the above rule.

*Whether counter-claim is a cross action.*—"A counter-claim is not a cross action: it cannot be deemed an action, it not being commenced by a writ of summons. But a counter-claim must be treated as if it were a procedure in a cross action." Therefore a plaintiff, by discontinuing an action, after a counter-

claim has been delivered, cannot put an end to it so as to prevent the defendant from enforcing against him the causes of action contained in the counter-claim. "The counter-claim gave the same rights against the plaintiff as a cross action would have done, and the discontinuance had no effect on it:" *McGowan v. Middleton*, 11 Q. B. D. 464, (and, particularly, judgment of Brett, M. R., at pp. 468, 472), overruling *Favasseur v. Krupp*, 15 Ch. D. 474, and following *Beddall v. Maitland*, 17 Ch. D. 174. See, also, O. XXI., r. 16, *post*, p. 221, and O. XXIV., r. 1, *post*, p. 230.

*Distinction between set-off and counter-claim.*—See as to this, *Gathercole v. Smith*, 7 Q. B. D. 626; *Winterfield v. Bradnum*, 3 Q. B. D. 324, at p. 326; *Baines v. Bromley*, 6 Q. B. D. 691, at p. 694.

*Cross actions—stay.*—In *Thompson v. S. E. Ry.*, 9 Q. B. D. 320, where there were cross actions arising out of the same subject-matter, the proceedings in the second action were stayed, the defendant being allowed to substitute a counter-claim.

*Death of counter-claiming defendant.*—An order of revivor of the original action against his representatives does not authorize them to prosecute the counter-claim without a separate order to revive it: *Andrew v. Aitken*, 21 Ch. D. 175.

*Costs.*—As to costs where there is a counter-claim and the original plaintiff recovers less than the sum fixed by the County Courts Act, 1867, see S. C. Jud. Act, 1873, s. 67, *ante*, p. 51; as to costs in other cases, see note to O. LXV., *post*, p. 477.

*Pleadings in case of counter-claim.*—See rr. 17, 18, of this Order; O. XXI., rr. 11, 12, 15—18, *post*, pp. 219—222.

*Forms of counter-claims.*—See App. D, Sect. VIII., *post*, p. 581.

4. Every pleading shall contain, and contain only, a statement in a summary form of the material facts on which the party pleading relies for his claim or defence, as the case may be, but not the evidence by which they are to be proved, and shall, when necessary, be divided into paragraphs, numbered consecutively. Dates, sums, and numbers shall be expressed in figures, and not in words. Signature of counsel shall not be necessary; but where pleadings have been settled by counsel or a special pleader, they shall be signed by him, and if not so settled they shall be signed by the solicitor or by the party if he sues or defends in person.

The present rule differs from the repealed rules by requiring pleadings to be signed.

*Pleading points of law.*—As to raising points of law on the pleadings, see O. XXV., *post*, p. 232.

*Pleading material facts—Cases.*—The words "material facts" in this rule do not mean merely facts which must be proved in order to establish the existence of the cause of action, but include also any facts which the party pleading is entitled to prove at the trial: *Lumb v. Beaumont*, 49 L. T. 772. In an action for defamation the defamatory words must be set out: *Harris v. Warre*, 4 C. P. D. 125, decided on the repealed rules.

In an action for the recovery of land the plaintiff's title must be set out: *Philipps v. Philipps*, 4 Q. B. D. 127, at pp. 132, 138, and Form, App. C., Sect. VII., No. 2, *post*, p. 572. See also *Davis v. James* (an action by the assignee of a reversion), 26 Ch. D. 778.

See some general remarks on the scope of the corresponding repealed rule in *Turquand v. Fearon*, 40 L. T. 543, and *Millington v. Loring*, 6 Q. B. D. 190, at p. 196.

*Evidence not to be pleaded.*—This applies to admissions as well as to other evidence: *Dary v. Garrett*, 7 Ch. D. 473.

*Prolixity.*—This rule requires pleadings to be concise, and the rule which follows prescribes forms to be used. If unduly prolix, the party pleading may either be saddled with costs (see r. 2 of this Order, *supra*), or the pleading may, under r. 27, be struck out as embarrassing: *Dary v. Garrett*, 7 Ch. D. 473, decided on the repealed O. XXVII., r. 1.

5. The Forms in Appendices C, D, and E, when applicable, and where they are not applicable forms of the like character, as

Order XIX.  
rr. 3—5.

200.  
Contents of  
pleading.  
[Cf. O. XIX.  
r. 4.]

Signature of  
pleadings.

201.

Forms in  
Appendix to  
be used.



**Order XIX.  
rr. 5, 6.**

near as may be, shall be used for all pleadings, and where such forms are applicable and sufficient any longer forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be.

*Effect of Rules.*—The forms of pleading referred to by this rule differ entirely from the forms under the Rules of 1875, and introduce a new and uniform system of pleading for all Divisions. The forms have, however, been held to be specimens only of the character of the pleadings, and are not to be slavishly adhered to: *The Isis*, 8 P. D. 227.

*Forms of pleading.*—App. C contains forms of statements of claim; App. D contains forms of defence and counter-claim; App. E contains forms of reply, and forms of defence raising points of law. See for these forms, *post*, pp. 552, 573, 582.

202.

Particulars to  
be stated in  
pleadings.

6. In all cases in which the party pleading relies on any misrepresentation, fraud, breach of trust, wilful default, or undue influence, and in all other cases in which particulars may be necessary beyond such as are exemplified in the forms aforesaid, particulars (with dates and items if necessary) shall be stated in the pleading; provided that, if the particulars be of debt, expenses, or damages, and exceed three folios, the fact must be so stated, with a reference to full particulars already delivered or to be delivered with the pleading.

**PARTICULARS.**

*Effect of Rule.*—This rule is a rule of pleading only: *Leitch v. Abbott*, 31 Ch. D. 374.

*Object of particulars.*—“The object of particulars is to enable the party asking for them to know what case he has to meet at the trial, and so to save unnecessary expense, and avoid allowing parties to be taken by surprise. . . . The old system of pleading at common law was to conceal as much as possible what was going to be proved at the trial, but under the present system it is our duty to see that a party so states his case that his opponent will not be taken by surprise:” per Cotton, L. J., *Spedding v. Fitzpatrick*, 38 Ch. D. 410, at pp. 413, 414.

*Effect of particulars on discovery.*—The generality of an allegation of fraud does not prevent discovery so as to enable the plaintiff to plead the fraud in detail: *Leitch v. Abbott*, 31 Ch. D. 374. Plaintiffs held not bound to give particulars of fraud before obtaining discovery: *Whyte v. Ahrens*, 26 Ch. D. 717. And see these cases discussed in *Sachs v. Spielman*, 37 Ch. D. 295, in which case an application for particulars was ordered to stand over until after defence put in.

*Effect of putting in defence.*—A defendant by delivering his defence does not waive his right to particulars: *Sachs v. Spielman*, 37 Ch. D. 295.

*Claim of definite sum.*—A plaintiff who claims from a defendant payment of a definite sum is bound to furnish (before defence) particulars of the sums claimed. *Secus*, if the claim be for an account, and for payment by defendant of what shall be found due from him: *Blackie v. Osmaston*, 28 Ch. D. 119; and see *Augustinus v. Nerineckx*, 16 Ch. D. 13.

In *Kemp v. Goldberg*, 56 L. T. 736, particulars were ordered of a balance alleged by counter-claim to be due to the defendant. And it was held by North, J., that an order should not be refused merely because an account was claimed.

*General allegation of misrepresentation—Evidence of specific instances.*—Where fraud is the ground of complaint, the facts constituting the fraud must be specifically pleaded, and evidence, therefore, was not allowed to be put in to prove facts not alleged in the pleadings: *Symonds v. City Bank*, 34 W. R. 364. In an action for misrepresentation, the particulars must show the nature of the misrepresentations, and whether they were verbal or in writing: *Seligmann v. Young*, W. N. (1884), 93.

*General allegations of breach of trust.*—Where in an administration action the plaintiff alleged that the defendant, an executor, in various ways had misapplied the rents and profits of the estate, and committed breaches of trust, and specified one misapplication, the Court made an order striking out the general



allegations, unless the plaintiff furnished particulars within seven days: *Re Anstice*, 52 L. T. 572.

Order XIX.  
rr. 6—8.

*Particulars of false entries.*—The object of particulars is to enable the party calling for them to know what case he has to meet: per Cotton, L. J., *Newport Slipway Dry Dock Co. v. Paynter*, 34 Ch. D. 88, at p. 93. Therefore, where plaintiffs had alleged false entries, and defendant had obtained an order for plaintiff to furnish particulars of such false entries, it was held that mere specification of the entries complained of did not give the defendants sufficient information of the nature of the case they had to meet, and that the plaintiffs must state shortly as to each item the general nature of the objection they made to it: *S. C.*

*Reasonable and probable cause.*—In an action for wrongful removal to a lunatic asylum, and for libel, particulars were refused of allegations contained in the defence of reasonable and probable cause for believing the plaintiff to be of unsound mind, on the ground that such allegations were immaterial: *Cave v. Torre*, 54 L. T. 516.

*Action for libel.*—Particulars of justification ordered to be given: *Hennessy v. Wright*, 36 W. R. 878.

*Action for slander.*—Particulars of the persons to whom uttered, ordered to be given: *Bradbury v. Cooper*, 12 Q. B. D. 94; *Roselle v. Buchanan*, 16 Q. B. D. 656. In *Williams v. Ramsdale*, 36 W. R. 125, an order that plaintiff should deliver an account in writing of the best particulars he could give of the places where and the persons present when the slanders complained of were uttered, was upheld by a Divisional Court. In *Brown v. Kirtley* (unreported) particulars were ordered of the occasion and circumstances on which a plea of privilege was based.

*Seduction.*—See *Thompson v. Birkley*, 31 W. R. 230.

*Trespass.*—As to particulars of acts of dedication, where, in an action for trespass on a road, defendants pleaded that it was a highway, see *Spedding v. Fitzpatrick*, 38 Ch. D. 410.

*Money paid into Court.*—The Court has a discretion to order a defendant to give particulars of the items of claim in respect of which he pays money into Court, but it can only make such an order when the trial of the action will be facilitated, and neither party embarrassed by it: *Orient Steam Co. v. Ocean Insurance Co.*, 34 W. R. 442.

*Probate actions.*—As to particulars in a probate action, where probate is resisted on the ground of undue influence, see *Marquis of Salisbury v. Nugent*, 9 P. D. 23. As to particulars of incapacity, see *Hankinson v. Birmingham*, 9 P. D. 62.

*Amendment of particulars.*—See *Claparede v. Commercial Union Association*, 32 W. R. 261.

*Admiralty actions.*—The rule as to giving the opposite party particulars as to any general allegation in pleadings ought to be the same in the Admiralty as in the Queen's Bench Division: *The Rory*, 7 P. D. 117.

*Adjournment of summons.*—In an action by the executors of a deceased married woman against her husband, claiming delivery of certain furniture alleged to form part of the separate estate of the deceased, North, J., ordered a summons by defendant for particulars of the claim to stand over until defendant had given discovery as to the furniture in his possession, specifying what part he claimed as his. The Court of Appeal affirmed the decision, and approved of the practice: *Miller v. Harper*, 38 Ch. D. 110.

7. A further and better statement of the nature of the claim or defence, or further and better particulars of any matter stated in any pleading, notice, or written proceeding requiring particulars, may in all cases be ordered, upon such terms, as to costs and otherwise, as may be just.

*Practice.*—For forms of summons, see Dan. Forms, p. 202; Chitt. Forms, p. 217. For forms of orders, see App. K, Nos. 11, 12, 13, *post*, p. 614. For forms of particulars, see Dan. Forms, pp. 201, 202; Chitt. Forms, p. 219.

8. The party at whose instance particulars have been delivered under a Judge's order shall, unless the order otherwise provides, have the same length of time for pleading after the delivery of the

203.

Further and better particulars.

204.

Time for pleading after particulars.

**Order XIX.  
rr. 8—11.**

Order no stay.

particulars that he had at the return of the summons. Save as in this Rule provided, an order for particulars shall not, unless the order otherwise provides, operate as a stay of proceedings, or give any extension of time.

This rule appears to be taken from R. G. H. T., 1853, r. 21. The proviso was introduced in 1883.

205.  
Printing  
[O. XIX. r. 5.]

9. Every pleading which shall contain less than ten folios (every figure being counted as one word) may be either printed or written, or partly printed and partly written, and every other pleading, not being a petition or summons, shall be printed.

*Printing.*—All pleadings when required to be printed, are to be printed by the parties: O. LXVI., r. 7, *post*, p. 504.

*Folio.*—A folio comprises 72 words, every figure being counted as one word: O. LXV., r. 27 (14), *post*, p. 491.

206.  
Delivery of  
pleadings.  
[O. XIX. r. 6.]

10. Every pleading or other document required to be delivered to a party, or between parties, shall be delivered in the manner now in use to the solicitor of every party who appears by a solicitor, or to the party if he does not appear by a solicitor, but if no appearance has been entered for any party, then such pleading or document shall be delivered by being filed with the proper officer.

*Effect of Rule.*—See *Dymond v. Croft*, 3 Ch. D. 512; *Morton v. Miller*, 3 Ch. D. 516.

*Service of documents generally.*—Where personal service not required, see O. LXVII., r. 2; on authorized solicitor: *Ibid.*, r. 7, *post*, pp. 507, 508.

*Delivery by filing.*—See O. LXVII., r. 4, *post*, p. 507. As to proper officer, see O. LXXI., r. 1; O. LXI., r. 1; O. XXXV., rr. 19, 21.

*Filing in Chancery Division.*—No pleadings or documents can be filed under this rule unless an affidavit of service, or an office copy thereof, be first produced to the officer: *Practice Rules*, *post*, p. 699.

*Where filing is not required.*—Where personal service has been effected, a pleading need not be filed: *Whitaker v. Thurston*, W. N. (1876), 232; *Renshaw v. R.*, 28 W. R. 409; *Dan. Pr.*, p. 49.

*Bankrupt defendant: revivor against trustee.*—Where a defendant becomes bankrupt after notice of trial, and an order is made for continuance of the action against the trustee and served on him, it is unnecessary to file the pleadings under this rule if the trustee does not appear: *Chorlton v. Dickie*, 13 Ch. D. 160.

207.  
Delivery to  
parties.  
Pleadings how  
marked.  
[Cf. O. XIX.  
r. 7.]

11. Every pleading shall be delivered between parties, and shall be marked on the face with the date of the day on which it is delivered, the reference to the letter and number of the action, the Division to which the Judge (if any) to whom the action is assigned belongs, the title of the action, and the description of the pleading, and shall be indorsed with the name and place of business of the solicitor and agent, if any, delivering the same, or the name and address of the party delivering the same if he does not act by a solicitor.

*Effect of Rule.*—This rule differs from the corresponding repealed rule, by requiring the address of the solicitor, &c., to be indorsed only. By the repealed rule it had to be both on face and back. It is no longer necessary that a pleading should state on its face, "Delivered the day of by Messrs. A. B. & Co., solicitors for the plaintiff (or defendant)." It is sufficient if the pleading states "Delivered the day of ." See the example of complete pleadings given in App. E, Sect. II., *post*, p. 582; see, too, the general forms in Sects. I. of App. C., D., and E. The rule does not apply to special indorsements: *Veale v. Automatic Boiler Co.*, 18 Q. B. D. 631.

*Letter and number.*—See O. V., r. 13, *ante*, p. 140; O. LXI., r. 19, *post*, p. 458.

*Assignment of action.*—See O. V., r. 5, *ante*, p. 137.



**12.** Nothing in these Rules contained shall affect the right of any defendant to plead not guilty by statute. And every defence of not guilty by statute shall have the same effect as a plea of not guilty by statute has heretofore had. But if the defendant so plead, he shall not plead any other defence to the same cause of action without the leave of the Court or a Judge.

Order XIX.  
rr. 12—15.

208.

Not guilty by statute.

[Cf. O. XIX.  
r. 16.]

*Plea of not guilty by statute.*—A large number of Acts, from early times down to the present, have contained provisions whereby particular persons, sued for particular classes of acts, may plead in answer the simple plea of not guilty, without further disclosing the defence on which they mean to rely, and may still prove any defence in justification which they can substantiate. As to the mode of pleading this defence, see O. XXI., r. 19, *post*, p. 222.

*In what cases.*—This privilege has been most frequently given for the protection of persons sued in respect of acts done in connection with the discharge of public or official duties. But it is by no means confined to such cases. See many instances collected in Bullen & Leake's *Precedents of Pleadings*, pp. 704 *et seq.*, ed. 3. The right of so pleading is preserved by this rule, and extended to Chancery and other actions.

By 5 & 6 Vict. c. 97, s. 3, the right to plead the general issue where given by any *local and personal* Act is abolished. The rule therefore applies only to public general Acts.

**13.** Every allegation of fact in any pleading, not being a petition or summons, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the opposite party, shall be taken to be admitted, except as against an infant, lunatic, or person of unsound mind not so found by inquisition.

209.

Allegations not denied are admitted.

[O. XIX. r. 17.]

*Cases on the Rule.*—Where a defendant by his defence simply "put the plaintiffs to prove the allegations of their claim," and did not appear at the trial, it was held that the statement of claim was admitted, and that no evidence need be adduced: *Harris v. Gamble*, 7 Ch. D. 877; see, too, *Green v. Sevin*, 13 Ch. D. 589. As to evasive denial, see *Tildesley v. Harper*, 10 Ch. D. 393; *Thorp v. Holdsworth*, 3 Ch. D. 637; *Byrd v. Nunn*, 7 Ch. D. 284; *Collette v. Goode*, *Ib.* 842.

*Judgment on admissions.*—As to moving for judgment on admissions, see O. XXXII., r. 6, *post*, p. 270.

*Infant.*—As to the course where one of several defendants is an infant, see *National and Provincial Bank v. Evans*, 30 W. R. 177. The correct course, where infants are parties and their defence is withdrawn, and judgment moved for, is to prove the statement of claim by affidavit: *Fitzwater v. Waterhouse*, 52 L. J., Ch. 83; *Gardner v. Tapping*, 33 W. R. 473.

**14.** Any condition precedent, the performance or occurrence of which is intended to be contested, shall be distinctly specified in his pleading by the plaintiff or defendant (as the case may be); and, subject thereto, an averment of the performance or occurrence of all conditions precedent necessary for the case of the plaintiff or defendant shall be implied in his pleading.

210.

Conditions precedent.

*Effect of Rule.*—This rule was introduced in 1883, and removes the doubt which formerly existed as to whether the performance of conditions precedent ought to be averred generally, in accordance with C. L. P. Act, 1852, s. 57. See *Whiting v. East London Waterworks Co.*, W. N. (1884), 10.

**15.** The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counter-claim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or would raise issues of fact not arising out of the preceding pleadings, as for instance, fraud, Statute of Limitations,

211.

What facts must be pleaded.

[Cf. O. XIX.  
r. 18.]



**Order XIX.  
rr. 15—18.**

release, payment, performance, facts showing illegality either by statute or common law, or Statute of Frauds.

See O. XXV., *post*, p. 232, as to raising points of law on the pleadings.

*Statute of Limitations.*—Where at the trial an account was directed against the heir-at-law of a defaulting trustee, and the defence of the Statute of Limitations was not raised until the hearing on further consideration, it was held that such defence ought to have been pleaded in the defence: *Re Burge*, 57 L. T. 364.

212.

Inconsistent  
pleadings.

[O. XIX.  
r. 19.]

**16.** No pleading, not being a petition or summons, shall, except by way of amendment, raise any new ground of claim or contain any allegation of fact inconsistent with the previous pleadings of the party pleading the same.

*Effect of Rule.*—This rule is in accordance with the rule both at Common Law and in Chancery, except that it allows a larger right of amendment than was allowed in Chancery. By O. XXIII., r. 6, *post*, p. 230, new assignments are abolished.

This rule must be read subject to the provisions of O. XXIV., r. 2, *post*, p. 231, as to replying matters arising after action brought.

213.

Specific denial.

[Cf. O. XIX.  
r. 20.]

**17.** It shall not be sufficient for a defendant in his statement of defence to deny generally the grounds alleged by the statement of claim, or for a plaintiff in his reply to deny generally the grounds alleged in a defence by way of counter-claim, but each party must deal specifically with each allegation of fact of which he does not admit the truth except damages.

*Effect of Rule.*—The words “except damages” were introduced in 1883. Formerly it was necessary to deny specifically allegations as to damages. See forms of denials in App. D, *post*, p. 573.

*Cases.*—See *Thorp v. Holdsworth*, 3 Ch. D. 637; *Byrd v. Nunn*, 7 Ch. D. 284; *Harris v. Gamble*, 7 Ch. D. 877, as to defences. As to an evasive denial, see *Tildesley v. Harper*, 10 Ch. D. 393. Unless the allegations of the statement of claim are specifically denied the plaintiff is entitled to move for judgment as upon admissions: *Rutter v. Tregent*, 12 Ch. D. 758.

*Counter-claim.*—A reply to a counter-claim is in the nature of a defence: see *Williamson v. L. & N. W. Ry.*, 12 Ch. D. 787; *Green v. Sevin*, 13 Ch. D. 589. The plaintiff therefore cannot merely join issue on a counter-claim: *Benbow v. Low*, 13 Ch. D. 553, and see form in Appendix E, Sect. I., *post*, p. 588.

214.

Joinder of  
issue.

[O. XIX.  
r. 21.]

**18.** Subject to the last preceding Rule, the plaintiff by his reply may join issue upon the defence, and each party in his pleading (if any), subsequent to reply, may join issue upon the previous pleading. Such joinder of issue shall operate as a denial of every material allegation of facts in the pleading upon which issue is joined, but it may except any facts which the party may be willing to admit, and shall then operate as a denial of the facts not so admitted.

*Non-delivery of reply, &c.*—By O. XXVII., r. 13, *post*, p. 241, non-delivery of a reply or subsequent pleading operates as a joinder of issue.

*Effect of Rules 17 and 18.*—The effect of rules 17 and 18 taken together is, that, whether in the case of a claim by the plaintiff or a counter-claim by the defendant, the opposing party is not at liberty to deny the facts alleged in general terms, but must deal with them specifically. But the party who has once stated his own case may, by a mere joinder of issue, deny in general terms what his opponent alleges in answer, unless the answer be by way of counter-claim. Joinder of issue, however, is to operate merely by way of denial. If the party entitled to join issue is not content with mere denial, and wishes to introduce new facts to answer his opponent's allegations, he must plead those facts under rule 15 of this Order; and a plaintiff has a right to do so in reply: *Hall v. Eve*, 4 Ch. D. 341; or he may amend his previous pleadings.

19. When a party in any pleading denies an allegation of fact in the previous pleading of the opposite party, he must not do so evasively, but answer the point of substance. Thus, if it be alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is made with divers circumstances, it shall not be sufficient to deny it along with those circumstances.

Order XIX.  
rr. 19—22.

215.

Evasive  
denial.

[Cf. O. XIX.  
r. 22.]

This rule is founded on C. O. XV., r. 2.

Cases.—As to the strictness with which this rule is construed, see *Thorp v. Holdsworth*, 3 Ch. D. 637; *Byrd v. Nunn*, 7 Ch. D. 284; *Collette v. Goode*, 7 Ch. D. 842. A denial in an action for libel that the defendant wrote or published the same falsely and maliciously is bad pleading; the facts relied upon must be set out: *Belt v. Lawes*, 51 L. J., Q. B. 359. As to conditions under which leave to amend will be given when an evasive denial has been pleaded, see *Tildesley v. Harper*, 10 Ch. D. 393.

20. When a contract, promise, or agreement is alleged in any pleading, a bare denial of the same by the opposite party shall be construed only as a denial in fact of the express contract, promise, or agreement alleged, or of the matters of fact from which the same may be implied by law, and not as a denial of the legality or sufficiency in law of such contract, promise, or agreement, whether with reference to the Statute of Frauds or otherwise.

216.

Denial of  
contract:  
Legality:  
Statute of  
Frauds.

[Cf. O. XIX.  
r. 23.]

For forms of pleading the Statute of Frauds, see App. D, Sect. IV., *post*, p. 679.

Cases.—The rule requiring an objection founded upon the Statute of Frauds to be pleaded specially is construed strictly. Thus, where one party, asserting a contract, alleged circumstances in anticipation of an objection on the ground of the statute, and these were traversed, it was held that the statute could not be relied upon: *Clarke v. Callow*, 46 L. J., Q. B. 53. As to the reasons for requiring the statute to be pleaded, see *Daubins v. Lord Penrhyn*, 4 App. Cas. 51, at p. 58, per Lord Cairns. As to pleading the Bills of Sale Act where it is relied on as a defence, see *Coburn v. Collins*, 66 L. T. 431.

21. Wherever the contents of any document are material, it shall be sufficient in any pleading to state the effect thereof as briefly as possible, without setting out the whole or any part thereof unless the precise words of the document or any part thereof are material.

217.

Contents of  
documents.

[O. XIX.  
r. 24.]

Cases.—In an action for libel the precise words are material: *Harris v. Warre*, 4 C. P. D. 125.

Where *res judicata* in an Irish Court was alleged, a brief statement of the Irish judgment was held sufficient: *Houston v. Sligo*, 29 Ch. D. 448.

22. Wherever it is material to allege malice, fraudulent intention, knowledge, or other condition of the mind of any person, it shall be sufficient to allege the same as a fact without setting out the circumstances from which the same is to be inferred.

218.

Malice, fraud,  
or other  
mental state.

[O. XIX.  
r. 25.]

*Allegation of negligence.*—See *Sandys v. Florence*, 47 L. J., Q. B. 598.

*Allegation of fraud.*—See *Davy v. Garrett*, 7 Ch. D. 473, at p. 489; *Symonds v. City Bank*, 34 W. R. 364; *Smith v. Chadwick*, 9 App. Cas. 187; *Wallingford v. Mutual Society*, 5 App. Cas. 685.



**Order XIX.  
rr. 23—27.**

219.  
Notice.

[Cf. O. XIX.  
r. 26.]

220.  
Implied con-  
tract.

[O. XIX.  
r. 27.]

**23.** Wherever it is material to allege notice to any person of any fact, matter, or thing, it shall be sufficient to allege such notice as a fact, unless the form or the precise terms of such notice, or the circumstances from which such notice is to be inferred, be material.

**24.** Whenever any contract or any relation between any persons is to be implied from a series of letters or conversations, or otherwise from a number of circumstances, it shall be sufficient to allege such contract or relation as a fact, and to refer generally to such letters, conversations, or circumstances without setting them out in detail. And if in such case the person so pleading desires to rely in the alternative upon more contracts or relations than one as to be implied from such circumstances, he may state the same in the alternative.

For an example of this method of pleading, see Appendix C, Sect. II., Nos. 11, 12, *post*, p. 557. On the similar terms of the former rule, it was held that if the contract relied on is a contract in writing, the fact should be stated: *Turquand v. Fearon*, 40 L. T. 543. See now the forms in App. C, Sect. IV., No. 11, and Sect. V., Nos. 1 and 2, *post*, pp. 564—566.

221.  
Burden of  
proof.  
[O. XIX.  
r. 28.]

**25.** Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied: (*e. g.*, consideration for a bill of exchange, where the plaintiff sues only on the bill, and not for the consideration as a substantive ground of claim.)

**26.** No technical objection shall be raised to any pleading on the ground of any alleged want of form.

This rule was introduced in 1883. See also O. LXX., *post*, p. 512.

222.  
Technical  
objections  
abolished.

223.  
Amending and  
striking out  
pleadings.  
[Cf. O.  
XXVII. r. 1.]

**27.** The Court or a Judge may at any stage of the proceedings order to be struck out or amended any matter in any indorsement or pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass, or delay the fair trial of the action; and may in any such case, if they or he shall think fit, order the costs of the application to be paid as between solicitor and client.

*Amending at instance of party pleading.*—See O. XXVIII., r. 1, *post*, p. 242.

*Effect of Rule.*—The present rule is taken from the second branch of the former O. XXVII., r. 1, which dealt also with amendment at the instance of the party pleading. It further enables any matter to be struck out which is unnecessary even though not scandalous.

*Power: how exercised.*—The power of striking out pleadings, or parts of pleadings, or causing them to be amended, on the application of the opposite party, is not so exercised as to enable one party to dictate to the other how he shall plead (as to which, see *Rolfe v. Maclaren*, 3 Ch. D. 106); but it is exercised in the cases enumerated in the rule, where the statements in the pleading are scandalous, or unnecessary, or tend to prejudice, embarrass, or delay the fair trial of the action; and the Court has no jurisdiction to strike matters out unless they are in breach of the rule: *Millington v. Loring*, 6 Q. B. D. 190, at p. 196. A reasonable latitude must be given to the rule. Thus, where reasons were pleaded as showing that a particular act was not *ultra vires* as was alleged by the plaintiff, it was held that it would be a wrong application of the rule to order such reasons to be struck out, unless the matter sought to be struck out were utterly irrelevant. It was not the meaning of the rule that any matter alleged in the defence as a reason should be struck out merely because it was a bad reason: *Tomlinson v. S. E. Ry. Co.*, 57 L. T. 358.

*Scandal and irrelevancy.*—See *Cashin v. Cradock*, 3 Ch. D. 376; *Blake v. Albion Life Assurance Society*, 45 L. J., C. P. 663. In an action by a wife for rectification of her settlement, allegations of acts of immorality by the husband were struck out: *Coyle v. Cuming*, 27 W. R. 529.



*Scandalous and embarrassing pleadings.*—See *Lumb v. Beaumont*, 49 L. T. 772; *Brooking v. Maudslay*, 55 L. T. 343.

Order XIX.  
rr. 27, 28.

*Embarrassing pleading.*—A pleading is embarrassing when it is not in conformity with the rules of pleading: *Heugh v. Chamberlain*, 25 W. R. 742. See also, *Davy v. Garrett*, 7 Ch. D. 473; *Philipps v. P.*, 4 Q. B. D. 127; *Williamson v. L. & N. W. Ry. Co.*, 12 Ch. D. 787; *Harris v. Jenkins*, 22 Ch. D. 481; *Liardet v. Hammond Electric Light Co.*, 31 W. R. 710; *Smith v. British Mutual Insurance Association*, W. N. (1883), 232. In an action for breach of promise of marriage, an allegation of seduction was held to be a material fact properly pleadable: *Millington v. Loring*, 6 Q. B. D. 190. In an action to enforce specific performance of an agreement for compromise of a former action, the plaintiff is not entitled to reiterate in his statement of claim the allegations which were in issue in the former action: *Knowles v. Roberts*, 38 Ch. D. 263. A defence stating merely facts which taken as a whole would in Equity have constituted grounds for relief against the action, is not liable to be struck out as embarrassing: *Heap v. Marris*, 2 Q. B. D. 630. A defence, denying the causes of action, and pleading payment into Court in respect of the whole or any part of them, is not embarrassing: *Berdan v. Greenwood*, 3 Ex. D. 251; but see *Spurr v. Hall*, 2 Q. B. D. 615. An application to strike out a paragraph in a statement of claim, disclosing a felony for which the defendant ought to have been prosecuted, was refused, where the plaintiff was not the person upon whom the felonious act was committed, and had no duty to prosecute: *Appleby v. Franklin*, 17 Q. B. D. 93. Inconsistent alternative pleadings are not necessarily embarrassing within the rule: *Re Morgan*, 35 Ch. D. 492.

*Pleading tending to prejudice or delay the fair trial of the action.*—See *Gray v. Webb*, 21 Ch. D. 802 (a counter-claim calculated to delay the plaintiff's action struck out); *Smith v. British Mutual Insurance Association*, W. N. (1883), 232.

*Discretion.*—The striking out of pleadings as embarrassing is a matter of discretion; and the C. A. will not ordinarily review a Judge's decision unless in an extreme case, or unless some question of principle is involved: *Golding v. Wharton Salt Works Co.*, 1 Q. B. D. 374; *Watson v. Rodwell*, 3 Ch. D. 380. But "a defendant may claim *ex debito justitiæ* to have the plaintiff's case presented in an intelligible form, so that he may not be embarrassed in meeting it; and the Court ought to be strict, even to severity, in taking care to prevent pleadings degenerating into the old oppressive pleadings of the Court of Chancery": per James, L. J., in *Davy v. Garrett*, 7 Ch. D. 473, at p. 486.

*Mode of application.*—An application to strike out pleadings should be made by summons: *Marriott v. Marriott*, 26 W. R. 416. See Dan. Forms, p. 200; Chitt. Arch., pp. 318, 319.

*Scandalous matter generally.*—For definition of scandal, see Dan. Pr., p. 386, and see *Christie v. C.*, 8 Ch. 499; *Rubery v. Grant*, 13 Eq. 443; *Fisher v. Owen*, 8 Ch. D. 645. Though this rule only affects pleadings, and O. XXXVIII., r. 11, *post*, p. 323, only relates to affidavits, scandalous matter in a bill of costs or other proceedings may be dealt with under the general jurisdiction of the Court: *Re Miller*, 51 L. T. 853.

*Costs.*—Costs occasioned by scandalous matter will as a rule be ordered to be paid by the offending party as between solicitor and client: *Christie v. Christie*, 8 Ch. 499; *Morgan & Wurtzburg*, pp. 36 *et seq.*

*Excluding counter-claim.*—See O. XXI., r. 15, *post*, p. 220.

**28.** In actions in any Division for damage by collision between vessels, unless the Court or a Judge shall otherwise order, the solicitor for the plaintiff shall, within *seven days* after the commencement of the action, and the solicitor for the defendant shall within *seven days* after appearance, and before any pleading is delivered, file with the Registrar, Master, or other proper officer, as the case may be, a document to be called a Preliminary Act, which shall be sealed up and shall not be opened until ordered by the Court or a Judge, and which shall contain a statement of the following particulars:

(a) The names of the vessels which came into collision and the names of their masters;

224.

Actions for collision between ships. Preliminary Act. [Cf. O. XIX. r. 30.]

Order XIX.  
r. 28.

- (b) The time of the collision ;
- (c) The place of the collision ;
- (d) The direction and force of the wind ;
- (e) The state of the weather ;
- (f) The state and force of the tide ;
- (g) The course and speed of the vessel when the other was first seen ;
- (h) The lights, if any, carried by her ;
- (i) The distance and bearing of the other vessel when first seen ;
- (k) The lights, if any, of the other vessel which were first seen ;
- (l) Whether any lights of the other vessel, other than those first seen, came into view before the collision ;
- (m) What measures were taken, and when, to avoid the collision ;
- (n) The parts of each vessel which first came into contact.

The Court or a Judge may order the Preliminary Act to be opened and the evidence to be taken thereon without its being necessary to deliver any pleadings ; but in such case, if either party intends to rely on the defence of compulsory pilotage, he may do so, and shall give notice thereof in writing to the other party within two days from the opening of the Preliminary Act.

*Cases.*—The Preliminary Act is not required in an action for damage brought by the cargo-owner against the ship on which the cargo is carried arising out of a collision with another vessel : *The John Boyne*, 36 L. T. 29.

See as to the object of the Preliminary Act, and as to amending it, *The Frankland*, 3 Adm. 511.

It was held in *Webster v. M. S. & L. Ry.*, W. N. (1884), 1, that “damage by collision” included personal injuries. It was held in *The Vera Cruz*, 10 App. Cas. 59, that the Probate, Divorce, and Admiralty Division could not entertain an action *in rem* for damages for loss of life under Lord Campbell’s Act. But an action *in personam* under that Act is within the jurisdiction of the Probate, Divorce, and Admiralty Division : *The Bernina*, 12 P. D. 58 ; *The Orwell*, 13 P. D. 80. Such actions, however, are not Admiralty actions, and are not affected by s. 25, sub-s. (9) of S. C. Jud. Act, 1873 : *The Bernina* (*ubi sup.*).

In *The Miranda*, an application to amend the Preliminary Act was refused : 7 P. D. 185. In *The Godiva*, 11 P. D. 20, an order to amend was made.

## ORDER XX.

## STATEMENT OF CLAIM.

Order XX.  
r. 1.

1. The delivery of statements of claim shall be regulated as follows :—

- (a) Where the writ is specially indorsed under Order III., Rule 6, no further statement of claim *shall* be delivered, but the indorsement on the writ shall be deemed to be the statement of claim :

225.  
Delivery of  
claims.  
[Cf. O. XXI.  
r. 1.]

Where writ  
specially in-  
dorsed.

See *G. v. H.*, W. N. (1883), 233. A statement of claim will be ordered to be delivered if the Court should be of opinion that the case is one not really within O. III., r. 6, though the writ purports to have been indorsed under that rule : *Casey v. Hellyer*, 17 Q. B. D. 97. A specially indorsed writ is not (for the purposes of the rules as to delivery of pleadings) a pleading : *Murray v. Stephenson*, 19 Q. B. D. 60 ; see, too, *Veale v. Automatic Boiler Co.*, 18 Q. B. D. 631. But service of a specially indorsed writ is delivery of a statement of claim within the meaning of O. XXI., r. 6, so that the defendant has *ten days* from the time limited for appearance within which to deliver his defence : *Anlaby v. Prætorius*, 20 Q. B. D. 764.



- (b) Subject to the provisions of Order XIII., Rule 12, as to filing a statement of claim when there is no appearance, no statement of claim *need* be delivered unless the defendant at the time of entering appearance, or within *eight days* thereafter, gives notice in writing to the plaintiff or his solicitor that he requires a statement of claim to be delivered: Order XX.  
r. 1, (b)—(e).  
Statement of claim need not be delivered unless required.
- (c) If no statement of claim has been delivered and the defendant gives notice requiring the delivery of a statement of claim, the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver it within *five weeks* from the time of the plaintiff receiving such notice: Time for delivery.
- (d) The plaintiff may (except as in (a) mentioned) deliver a statement of claim, either with the writ of summons or notice in lieu of writ of summons, or at any time afterwards either before or after appearance, notwithstanding that the defendant may have appeared and not required the delivery of a statement of claim: Provided that in no case where a defendant has appeared shall a statement be delivered more than *six weeks* after the appearance has been entered unless otherwise ordered by the Court or a Judge: Statement of claim may be delivered.
- (e) Where the plaintiff delivers a statement of claim without being required to do so, or the defendant unnecessarily requires such statement, the Court or a Judge may make such order as to the costs occasioned thereby as shall be just, if it appears that the delivery of a statement of claim was unnecessary or improper. Costs of unnecessary statement of claim.

**EFFECT OF RULE.**—This Order makes material alterations in the rules of pleading.

- A. Where the writ is specially indorsed under O. III., r. 6, it is to be specially indorsed with the statement of claim, and, therefore, in this case any further statement of claim is forbidden. For forms of writs specially indorsed with a statement of claim, see App. A, Part I., Nos. 2 *et seq.*, *post*, p. 521. For forms of statements of claim constituting special indorsements, see App. C, Sect. IV., *post*, p. 560.
- B. In other cases no statement of claim need be delivered unless the defendant requires it. The plaintiff, may, however, deliver a statement of claim at his own risk as regards costs. Under the former practice it had to be delivered unless the defendant dispensed with it.
- C. The time for delivery of a statement of claim, when required by the defendant, is now fixed at *five weeks* from the receipt of the notice requiring it. If the plaintiff delivers it without such request, the old time of *six weeks* from entry of appearance is to be observed.
- D. When a defendant unnecessarily requires a statement of claim, he is liable to be visited with costs.

The requisition for a statement of claim should, as a general rule, be made in the notice of entry of appearance, see App. A, Part II., Form No. 2, *post*, p. 530, and Practice Rules, *post*, p. 697.

*Short causes.*—Under the repealed rules there was a difference of opinion among the Judges of the Chancery Division as to the propriety of delivering a statement of claim in cases intended to be heard as short causes: Jessel, M. R., in *Taylor v. Duckett*, W. N. (1875), 193, and Hall, V.-C., in *Green v. Coleby*, 1 Ch. D. 693, held that a statement of claim should be dispensed with in such cases; whereas Malins, V.-C., in *Breton v. Mockett*, 33 L. T. 684; *Boyes v. Cook*, *ibid.* 778, held a statement to be necessary whenever the order to be made depends on a written instrument.



**Order XX.**  
**rr. 1—6.**

*Probate actions.*—By rule 2, if the defendant has appeared, the plaintiff has *eight days* from the filing of the defendant's affidavit of scripts for delivering his statement.

*Admiralty actions in rem.*—By rule 3 the statement of claim must be delivered within *twelve days* from appearance. Where a ship is under arrest it might well be unjust to allow any delay on the part of the plaintiff before disclosing his claim.

*Enlargement of times.*—The several times limited for pleading may be either enlarged by consent or enlarged or abridged by order of a Judge; and an order for enlargement may be made either before or after the prescribed time has expired: O. LXIV., r. 7, *post*, p. 469.

*Vacations.*—No pleadings can be either delivered or amended in the Long Vacation, except by order of the Court or a Judge; and the period of the Long Vacation is not to be reckoned in computing the time for delivering any pleading, unless otherwise directed by the Court or a Judge: O. LXIV., rr. 4, 5, *post*, p. 468.

*Time expiring on Sunday, &c.*—By O. LXIV., r. 3, *post*, p. 468, "Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day," the next day is allowed.

*Form.*—For a general form of a statement of claim, see App. C, Sect. I., *post*, p. 553.

226.  
Probate  
actions.  
[O. XXI. r. 2.]

**2.** In Probate actions the plaintiff shall, unless otherwise ordered by the Court or a Judge, deliver his statement of claim within *six weeks* from the entry of appearance by the defendant, or from the time limited for his appearance, in case he has made default; but where the defendant has appeared the plaintiff shall not be compelled to deliver it until the expiration of *eight days* after the defendant has filed his affidavit as to scripts.

227.  
Admiralty  
actions.  
[O. XXI. r. 3.]

**3.** In Admiralty actions *in rem* the plaintiff shall, within *twelve days* from the appearance of the defendant, deliver his statement of claim.

228.  
Amendment of  
writ unnece-  
sary.

**4.** Whenever a statement of claim is delivered the plaintiff may therein alter, modify, or extend his claim without any amendment of the indorsement of the writ.

This rule, which was introduced in 1883, is in affirmance of *Large v. L.*, W. N. (1877), 198. See *Willmott v. Freehold House Co.*, 51 L. T. 552.

*Default of appearance.*—Where there is no appearance by defendant to the writ, plaintiff cannot by his statement of claim enlarge the scope of the claim indorsed on his writ: *Law v. Philby* (No. 2), 35 W. R. 450; *Gee v. Bell*, 35 Ch. D. 160; *Kingdon v. Kirk*, 37 Ch. D. 141.

229.  
Place of trial  
to be shown.  
[Cf. O.  
XXXVI. r. 1.]

**5.** The statement of claim must in all cases in which it is proposed that the trial should be elsewhere than in Middlesex, show the proposed place of trial.

*Special indorsement.*—Where the statement of claim is indorsed on the writ pursuant to O. III., r. 6, the proposed place of trial, if other than Middlesex, must be stated therein; see Forms in App. A, Part I., Nos. 2 *et seq.*, *post*, p. 521.

*Place of trial.*—See O. XXXVI., r. 1, *post*, p. 284.

230.  
Claim for  
relief.  
[Cf. O. XIX.  
r. 8.]

**6.** Every statement of claim shall state specifically the relief which the plaintiff claims, either simply or in the alternative, and it shall not be necessary to ask for general or other relief which may always be given, as the Court or a Judge may think just, to the same

extent as if it had been asked for. And the same rule shall apply to any counter-claim made, or relief claimed by the defendant, in his defence.

Order XX.  
rr. 6—9.

*General relief.*—The present rule dispenses with the necessity of asking for general relief. As to the former practice under which this was required, see *Holloway v. York*, 25 W. R. 627; *Cargill v. Bower*, 10 Ch. D. 502, at p. 508.

*Claim for relief.*—The claimant is to state his facts and his claim to relief, not the proposition of law by virtue of which his right arises out of his facts: *Watson v. Rodwell*, 3 Ch. D. 380; *Hanmer v. Flight*, 36 L. T. 279. Nor need he distribute his facts and show which support each claim of relief: *Watson v. Hawkins*, 24 W. R. 884.

*Equities appearing incidentally.*—As to the duty of the Court to take cognizance of equities which appear incidentally, see S. C. Jud. Act, 1873, s. 24, (4), *ante*, p. 17.

*Mandamus, &c.*—As to the grant of a mandamus or injunction, or the appointment of a receiver by interlocutory order, see s. 25, (8), *ante*, p. 23, and note thereto.

*Particulars.*—As to particulars, which must now be set out in the statement of claim, see O. XIX., rr. 6, 7, *ante*, pp. 206, 207.

7. Where the plaintiff seeks relief in respect of several distinct claims or causes of complaint founded upon separate and distinct grounds they shall be stated, as far as may be, separately and distinctly. And the same rule shall apply where the defendant relies upon several distinct grounds of defence, set-off, or counter-claim founded upon separate and distinct facts.

231.  
Distinct claim or defences.  
[Cf. O. XIX. r. 9.]

As to the joinder of several causes of action, see O. XVIII., *ante*, p. 198.

8. In every case in which the cause of action is a stated or settled account, the same shall be alleged with particulars, but in every case in which a statement of account is relied on by-way of evidence or admission of any other cause of action which is pleaded, the same shall not be alleged in the pleadings.

232.  
Settled account or account stated.

This rule was introduced in 1883.

*Particulars.*—See O. XIX., rr. 6 and 7, *ante*, pp. 206, 207.

9. In Probate actions where the plaintiff disputes the interest of the defendant, he shall allege in his statement of claim that he denies the defendant's interest.

See *Medcalf v. James*, 25 W. R. 63.

233.  
Denial of interest in Probate actions.  
[O. XIX. r. 12.]

## ORDER XXI.

### DEFENCE AND COUNTER-CLAIM.

Order XXI.  
rr. 1, 2.

1. In actions for a debt or liquidated demand in money comprised in Order III., Rule 6, a mere denial of the debt shall be inadmissible.

This rule was introduced in 1883. For forms of defence denying a debt, see App. D, Sect. IV., *post*, p. 577.

See *Copley v. Jackson*, W. N. (1884), 39.

234.  
Denial of debt inadmissible.

2. In actions upon bills of exchange, promissory notes, or cheques, a defence in denial must deny some matter of fact; *e.g.*, the drawing, making, endorsing, accepting, presenting, or notice of dishonour of the bill or note.

See note to last rule.

235.  
Defence in actions on bills, &c.



**Order XXI.  
rr. 3—7.**

236.

Defence in  
actions on  
other debts.

237.

No denial as  
to damages.

238.

Representative  
character.

[O. XIX. r. 2.]

239.

Delivery of  
defence where  
claim de-  
livered.

[Cf. O. XXII.  
r. 1.]

**3.** In actions comprised in Order III., Rule 6, classes (A.) and (B.), a defence in denial must deny such matters of fact, from which the liability of the defendant is alleged to arise, as are disputed; *e.g.*, in actions for goods bargained and sold or sold and delivered, the defence must deny the order or contract, the delivery, or the amount claimed; in an action for money had and received, it must deny the receipt of the money, or the existence of those facts which are alleged to make such receipt by the defendant a receipt to the use of the plaintiff.

See note to rule 1, and O. III., r. 6, *ante*, p. 132.

**4.** No denial or defence shall be necessary as to damages claimed or their amount; but they shall be deemed to be put in issue in all cases, unless expressly admitted.

**5.** If either party wishes to deny the right of any other party to claim as executor, or as trustee whether in bankruptcy or otherwise, or in any representative or other alleged capacity, or the alleged constitution of any partnership firm, he shall deny the same specifically.

This rule is an extension of R. G. T. T. 1853, r. 3.

**6.** Where a statement of claim is delivered to a defendant he shall deliver his defence within *ten days* from the delivery of the statement of claim, or from the time limited for appearance, whichever shall be last, unless such time is extended by the Court or a Judge.

*Effect of Rule.*—Under the Rules of 1875 the time for delivery of defence was *eight days* only.

*Specially indorsed writ.*—The indorsement on such a writ is a statement of claim, and therefore a defendant has ten days from the time limited for appearance to deliver his defence: *Antaby v. Prætorius*, 20 Q. B. D. 764.

*Pendency of summons under O. XIV.*—Time for delivering a defence does not run pending the return of a summons under O. XIV.: *Hobson v. Monks*, W. N. (1884), 8.

*Default in delivery of defence.*—If the defence be not delivered within the time limited for that purpose, judgment may be entered for the plaintiff, as provided by O. XXVII., rr. 2—14, *post*, pp. 237, 241.

*Setting aside a judgment.*—As to setting aside a judgment entered in default of pleading, see O. XXVII., r. 15, *post*, p. 241.

*Computation of time, &c.*—See O. LXIV., rr. 4, 5, 12, *post*, pp. 468, 470.

*Extension of time, &c.*—As to the extension or reduction of the time for pleading, see O. LXIV., rr. 7, 8, *post*, pp. 468, 470. As to costs of unnecessary applications for time, see O. LXV., r. 27, (24), *post*, p. 494.

*Defence after pleading.*—As to the time for delivering a further defence, founded upon matters arising after defence delivered, see O. XXIV., r. 2, *post*, p. 231.

240.

Where no  
claim required  
or delivered.

[Cf. O. XXII.  
r. 2.]

**7.** A defendant who has appeared in an action, and who has neither received nor required the delivery of a statement of claim, must deliver his defence (if any) at any time within *ten days* after his appearance, unless such time is extended by the Court or a Judge.

*Effect of Rule.*—This rule was introduced in 1883. In the cases within O. XXVII., rr. 2—9, *post*, pp. 237—239, judgment may be entered for the plaintiff as therein provided, if no defence be delivered within the time limited by this rule. It would seem, however, that judgment cannot be obtained under rule 11 of O. XXVII., unless a statement of claim has been delivered.



*Specially indorsed writ.*—If the writ is specially indorsed under O. III., r. 6, no statement of claim can be required: *G. v. H.*, W. N. (1883), 233; see O. XX., r. 1, (b), *ante*, p. 215. In such case, however, the special indorsement is treated as a statement of claim, and a defendant has, therefore, *ten days* from the time limited for appearance to put in his defence under r. 6, *supra*: *Anlaby v. Prætorius*, 20 Q. B. D. 764.

Order XXI.  
rr. 7—11.

8. Where leave has been given to a defendant to defend under Order XIV., he shall deliver his defence (if any) within such time as shall be limited by the order giving him leave to defend, or if no time is thereby limited, then within *eight days* after the order.

241.  
Where leave to defend obtained.  
[O. XXII.  
r. 3.]

*Effect of Rule.*—This refers to the case of a writ specially indorsed under O. III., r. 6, when the plaintiff has applied for judgment notwithstanding appearance. For Forms of orders giving liberty to defend, see App. K, Nos. 7, 8 and 9, *post*, p. 613; and as to these Forms, see *Egerton v. Anderson*, W. N. (1884), 95.

9. Where the Court or a Judge shall be of opinion that any allegations of fact denied or not admitted by the defence ought to have been admitted, the Court or Judge may make such order as shall be just with respect to any extra costs occasioned by their having been denied or not admitted.

242.  
Improper denial.  
Costs.  
[O. XXII.  
r. 4.]

*Admissions.*—By O. XIX., r. 13, *ante*, p. 209, any allegation not denied or stated not to be admitted is to be taken as admitted. Admissions may also be made by notice apart from the pleadings: O. XXXII., rr. 1, 4, *post*, pp. 268, 269. As to admission of documents, see O. XXXII., r. 2, *post*, p. 269.

10. Where any defendant seeks to rely upon any grounds as supporting a right of counter-claim, he shall, in his statement of defence, state specifically that he does so by way of counter-claim.

243.  
Set-off or counter-claim how pleaded.  
[O. XIX.  
r. 10.]

*Effect of Rule.*—Under this rule the defendant must distinguish his counter-claim from his defence. He must not leave it to be inferred from the statement of defence, see *Holloway v. York*, 25 W. R. 627; *Crowe v. Barnicott*, 6 Ch. D. 753; *Hillman v. Mayhew*, 24 W. R. 485, decided on identical words in the old O. XIX., r. 10.

Under the Rules of 1875 it was held that a counter-claim might refer to statements of fact in the statement of claim or defence without setting out *in extenso* the paragraphs referred to: *Birmingham Estates Co. v. Smith*, 13 Ch. D. 506, at p. 509.

*Title of counter-claim.*—The counter-claim should be specifically entitled as such: see App. D, Sects. I. and VIII., and App. E, Sect. II., *post*, pp. 573, 581, 582.

As to the title where new parties are brought in, see next rule.

11. Where a defendant by his defence sets up any counter-claim which raises questions between himself and the plaintiff along with any other persons, he shall add to the title of his defence a further title similar to the title in a statement of claim setting forth the names of all the persons who, if such counter-claim were to be enforced by cross action, would be defendants to such cross action, and shall deliver his statement of defence to such of them as are parties to the action within the period within which he is required to deliver it to the plaintiff.

244.  
Counter-claim against other person as well as plaintiff.  
[O. XXII.  
r. 5.]

*Origin of right to counter-claim against third parties.*—The right of a defendant to join other persons besides the plaintiff in a counter-claim depends upon S. C. Jud. Act, s. 24, sub-s. 3, *ante*, p. 16. See O. XIX., r. 3, *ante*, p. 203, and notes

**Order XXI.  
rr. 11—15.**

thereto. The combined effect of the above section and of these Rules does not, it seems, render sect. 5 of the County Courts Act, 1867, applicable to a counter-claim against third parties: *Lewin v. Trimming*, 21 Q. B. D. 230.

*Third party out of jurisdiction*—Cannot be served with a counter-claim: *Potters v. Millar*, 31 W. R. 858.

245.

Where third  
person not yet  
a party.  
[O. XXII.  
r. 6.]

**12.** Where any such person as in the last preceding Rule mentioned is not a party to the action, he shall be summoned to appear by being served with a copy of the defence, and such service shall be regulated by the same Rules as are hereinbefore contained with respect to the service of a writ of summons, and every defence so served shall be indorsed in the Form No. 2 in Appendix B., or to the like effect.

*Form.*—For the form here referred to, see *post*, p. 544.

*Service.*—As to service of writs of summons, see O. IX., X., XI., *ante*, pp. 145, 151.

*Appearance gratis.*—A person not a party to an action when made a defendant to a counter-claim is not entitled to enter an appearance *gratis*: *Fraser v. Cooper*, 23 Ch. D. 685.

246.

Appearance by  
third person.  
[O. XXII.  
r. 7.]

**13.** Any person not a defendant to the action, who is served with a defence and counter-claim as aforesaid, must appear thereto as if he had been served with a writ of summons to appear in an action.

*Appearance.*—See O. XII., *ante*, p. 157.

Probably the word “party” should be read for the word “defendant” in this rule, for no appearance is required except in the case of a person not a party to the action who is brought in by counter-claim.

247.

Reply to  
counter-claim.  
[O. XXII.  
r. 8.]

**14.** Any person named in a defence as a party to a counter-claim thereby made may deliver a reply within the time within which he might deliver a defence if it were a statement of claim.

*Time.*—The time to deliver a defence is *ten days*, unless the time is enlarged: rule 6 of this Order, *supra*.

*Right to counter-claim.*—A third party brought in by a counter-claim cannot counter-claim against the defendant who brought him in: *Street v. Gover*, 2 Q. B. D. 498 (see, however, *Eden v. Weardale Iron Co.*, 28 Ch. D. 333, at p. 338); but a plaintiff may, in his reply to a counter-claim of the defendant, counter-claim in respect of a cause of action accrued after the issue of the writ, but arising out of the same transaction as the defendant’s counter-claim: *Tuke v. Andrews*, 8 Q. B. D. 428.

248.

Striking out  
counter-claim.  
[O. XXII.  
r. 9.]

**15.** Where a defendant sets up a counter-claim, if the plaintiff or any other person named in manner aforesaid as party to such counter-claim contends that the claim thereby raised ought not to be disposed of by way of counter-claim, but in an independent action, he may at any time before reply, apply to the Court or a Judge for an order that such counter-claim may be excluded, and the Court or a Judge may, on the hearing of such application, make such order as shall be just.

There is a slight discrepancy between the language of this rule and of r. 3 of O. XIX. See note to that rule, *ante*, p. 203.

*Mode of application.*—Usually by motion, but may be by summons: *Naylor v. Farrer*, 26 W. R. 809; *Huggons v. Tweed*, 10 Ch. D. 359.

*Application of Rule.*—A counter-claim can only be brought in cases where an action would lie. Where a counter-claim discloses no cause of action it may either be met by taking the objection of law in manner pointed out by O. XXV.,



see for instance *The Sir Charles Napier*, 5 P. D. 73 (decided on demurrer under the Rules of 1875); or it seems it may be struck out under this rule: *Birmingham Estates Co. v. Smith*, 13 Ch. D. 506. Where the counter-claim discloses a *prima facie* ground of action, but is embarrassing, the remedy is provided by this rule.

*Discretion.*—Although the question whether a counter-claim shall be excluded is not so entirely in the discretion of the Judge of first instance as to preclude an appeal, he has a discretion which will not be interfered with by the C. A. except in a very strong case: *Huggons v. Tweed*, 10 Ch. D. 359.

*Cases.*—For instances of the exercise of the discretion given by this rule, see *Dear v. Sworder*, 4 Ch. D. 476; *Lee v. Colyer*, W. N. (1876), 8; *Atwood v. Miller*, *ibid.* 11; *Bartholomew v. Rawling*, *ibid.* 56; *Macdonald v. Bode*, *ibid.* 23; *McLay v. Sharp*, W. N. (1877), 216; *Harris v. Gamble*, 6 Ch. D. 748; *Gray v. Webb*, 31 W. R. 8; *Fendall v. O'Connell*, 29 Ch. D. 899. In *Nicholson v. Jackson*, W. N. (1875), 38, a counter-claim was struck out without prejudice to a cross action, on the terms that execution should not issue in the original action without the leave of a Judge.

In an action for rent, a counter-claim for damages for a libel unconnected with the original action was excluded: *Rotheram v. Priest*, 28 W. R. 277. In an action for dissolution of partnership in one trade, a counter-claim for services rendered by the defendant to the plaintiff in another trade, was excluded: *Naylor v. Farrer*, 26 W. R. 809. See also *Macdonald v. Carrington*, 4 C. P. D. 28 (counter-claim against a plaintiff as executor when he sued in his personal capacity). See *Dear v. Sworder*, 4 Ch. D. 476; *Hodson v. Mochi*, 8 Ch. D. 569; and *Huggons v. Tweed*, 10 Ch. D. 359, for instances where counter-claims were allowed.

In *Lynch v. Macdonald*, 37 Ch. D. 227, an application made by the plaintiff at the hearing of an appeal for an order that a counter-claim might be tried separately was refused, on the ground that the plaintiff ought to have applied before reply to have the counter-claim tried separately under the above Rule, or before trial to have it disallowed under Ord. XIX., r. 3.

16. If, in any case in which the defendant sets up a counter-claim, the action of the plaintiff is stayed, discontinued, or dismissed, the counter-claim may nevertheless be proceeded with.

*Effect of Rule.*—This rule was introduced in 1883, and is in affirmance of *McGowan v. Middleton*, 11 Q. B. D. 464, overruling *Vavasour v. Krupp*, 15 Ch. D. 474.

17. Where in any action a set-off or counter-claim is established as a defence against the plaintiff's claim, the Court or a Judge may, if the balance is in favour of the defendant, give judgment for the defendant for such balance, or may otherwise adjudge to the defendant such relief as he may be entitled to upon the merits of the case.

See S. C. Jud. Act, 1873, s. 24, (6), *ante*, p. 20; O. XIX., r. 3, *ante*, p. 203, and notes thereto.

*Balance.*—The balance referred to in this rule is the balance which, on the hearing of the action, after taking into account the claims on both sides, may be found due to the defendant: *Rolfe v. Maclaren*, 3 Ch. D. 106. See also per Jessel, M. R., in *Chapman v. Royal Netherlands Steam Navigation Co.*, 4 P. D. at p. 162.

*Mode of entering judgment.*—"It is a matter of discretion for the Judge whether the judgment should be entered for so much for the plaintiff on the claim, and for so much for the defendant on the counter-claim, or whether it should be entered for the balance. I should suppose, unless there were reason to the contrary, that the usual course would be for the Judge to direct judgment to be entered for the balance." Per Lord Esher, M.R., *Shrapnel v. Laing*, 20 Q. B. D. 334; and see *Hewitt v. Blumer & Co.*, 3 Times, L. R. 221.

*Costs.*—As to the effect of this rule on costs, see note to S. C. Jud. Act, 1873, s. 67, *ante*, p. 51, and as to costs of separate issues on claim and counter-claim, see O. LXV., r. 2, *post*, p. 477.

Order XXI.  
rr. 15—17.

249.

Counter-claim may be proceeded with although action discontinued.

250.

Judgment for balance of counter-claim.  
[O. XXII.  
r. 10.]



**Order XXI.  
rr. 18—21.**

251.

Probate  
actions.Notice to  
prove in  
solemn form.

[O. XXII.

r. 11.]

18. In Probate actions the party opposing a will may, with his defence, give notice to the party setting up the will that he merely insists upon the will being proved in solemn form of law, and only intends to cross-examine the witnesses produced in support of the will, and he shall thereupon be at liberty to do so, and shall be subject to the same liabilities in respect of costs as he would have been under similar circumstances according to the practice of the Court of Probate, before the Principal Act came into operation.

This rule is in accordance with the practice formerly existing in the Probate Court under rule 41 of Rules, Contentious Business, 1862.

252.

General issue  
by statute now  
pleaded.

19. In every case in which a party shall plead the general issue intending to give the special matter in evidence by virtue of an Act of Parliament, he shall insert in the margin of his pleading the words "by statute," together with the year of the reign in which the Act of Parliament on which he relies was passed, and also the chapter and section of such Act, and shall specify whether such Act is public or otherwise; otherwise such defence shall be taken not to have been pleaded by virtue of any Act of Parliament.

See O. XIX., r. 12, *ante*, p. 209, preserving the right to plead not guilty by statute. This rule provides how the plea is to be pleaded, and is taken from R. G. T. T. 1853, r. 21.

253.

Pleas in  
abatement  
abolished.

[O. XIX.

r. 13.]

20. No plea or defence shall be pleaded in abatement.

*Plea in abatement.*—A plea in abatement in a Common Law action was a plea which, without disputing the cause of action alleged, stated facts showing that the plaintiff could not properly recover in the action as brought. Such a plea was generally founded upon some personal disability of parties, or upon defect of parties. As to defect of parties, see O. XVI., r. 11, *ante*, p. 176, and *Kendall v. Hamilton*, 4 App. Cas. at p. 516, per Lord Cairns.

254.

Defence in  
action for  
land.

[Cf. O. XIX.

r. 15.]

21. No defendant in an action for the recovery of land who is in possession by himself or his tenant need plead his title, unless his defence depends on an equitable estate or right or he claims relief upon any equitable ground against any right or title asserted by the plaintiff. But, except in the cases hereinbefore mentioned, it shall be sufficient to state by way of defence that he is so in possession, and it shall be taken to be implied in such statement that he denies, or does not admit, the allegations of fact contained in the plaintiff's statement of claim. He may nevertheless rely upon any ground of defence which he can prove except as hereinbefore mentioned.

*Action for recovery of land.*—See O. XVIII., r. 2, *ante*, p. 199, and notes thereto.

*Equitable title.*—Where the defendant relies on an equitable title, he must set out the material facts on which he relies as the foundation of his title: *Sutcliffe v. James*, 27 W. R. 750.

*Plea of possession.*—The present rule expressly provides that this defence is to operate as a denial of the plaintiff's title, thus in terms affirming *Danford v. McAnulty*, 8 App. Cas. 456.

ORDER XXII.

PAYMENT INTO AND OUT OF COURT AND TENDER.

1. Where any action is brought to recover a debt or damages, any defendant may, before or at the time of delivering his defence, or at any later time by leave of the Court or a Judge, pay into Court a sum of money by way of satisfaction, which shall be taken to admit the claim or cause of action in respect of which the payment is made; or he may, with a defence denying liability (except in actions or counter-claims for libel or slander), pay money into Court which shall be subject to the provisions of Rule 6: Provided that in an action on a bond under the Statute 8 & 9 Will. III. c. 11, payment into Court shall be admissible to particular breaches only, and not to the whole action.

255.  
Payment into Court with denial of liability.  
[Cf. O. XXX. r. 1.]

Bond.

*Effect of Order.*—Payment into Court in satisfaction was dealt with by O. XXX. of the Rules of 1875, which allowed it in any action.

The rules of the present Order differ very materially from the former Order. They consolidate the practice for all Divisions, and deal not only with payment into Court in satisfaction, but also with payment into Court in all cases, payment out of Court, and in certain cases the investment of money in Court.

By the Supreme Court of Judicature (Funds, &c.) Act, 1883, *post*, p. 717, the several accounting departments of the High Court were consolidated into one department; and provision was made for rules to carry out the provisions of the Act. See the Supreme Court Funds Rules, 1886, *post*, p. 724.

*Payment in satisfaction.*—It is to be observed that under rule 1 payment into Court in satisfaction operates as an admission of liability. A defendant may, however, pay money into Court with a defence denying liability except in libel and slander. In those actions, therefore, payment into Court will in all cases operate as an admission of liability, and the case of *Hauckesley v. Bradshaw*, 5 Q. B. D. 302, is no longer law.

*Payment in, with denial of liability.*—It follows from this rule, as read with rule 5 (a), that a defendant desiring to pay into Court and deny his liability must wait till he delivers his defence. As to payment into Court with denial of liability, see *Wheeler v. United Telephone Co.*, 13 Q. B. D. 597.

*Payment generally.*—It seems from the proviso to rule 1 that, except in actions on penal bonds, the defendant may still pay money into Court generally without specifying the particular items against which it is paid in. This was so allowed under the repealed rules: *Paraire v. Loibl*, 49 L. J., C. P. 481. But in *Rouse v. Kelly*, W. N. (1888), 141, an action by landlord against tenant claiming (1) possession, (2) mesne profits, (3) damages for breach of covenant; the defendant, having paid money into Court, was ordered to deliver particulars stating in respect of which of the two heads, (1) and (2), the money was paid in, and if in respect of both, how much for each.

As affecting the question of costs it may be of importance to pay into Court in satisfaction as early as possible.

*Restricted effect of Rule.*—This rule only applies to actions for debt or damages in the strict sense of the term, not, it seems, to an action for an account: *Nichols v. Evans*, 22 Ch. D. 611.

*Action on bond.*—See *Preston v. Dania*, 8 Ex. 19. See also O. XIII., r. 14, *ante*, p. 166.

2. Payment into Court shall be signified in the defence, and the claim or cause of action in satisfaction of which such payment is made shall be specified therein.

256.  
Pleading.  
[Cf. O. XXX. r. 1.]

*Payment into Court generally.*—Where a plaintiff claims for distinct pieces of work, and the defendant pays money into Court generally, he need not specify in his defence how much is paid in respect of each head of claim: *Paraire v. Loibl*, 49 L. J., C. P. 481.



**Order XXII.**  
**rr. 2—6.**

*Forms.*—For forms of defence signifying payment into Court, see App. D, Sect. IV., *post*, p. 579.

*Payment after defence.*—If money be paid into Court with leave after delivery of defence, it seems that the defence must be amended, as to which, see O. XXVIII., r. 1, *post*, p. 242.

257.  
Tender.

**3.** With a defence setting up a tender before action, the sum of money alleged to have been tendered must be brought into Court.

*Effect of Rule.*—This rule affirms what was the practice in the Common Law Courts: *Chapman v. Hicks*, 2 C. & M. 633, where it was held that without such payment the plaintiff might sign judgment for the sum to which tender was pleaded. See further, as to the old plea of tender, Bullen & Leake, ed. 3, p. 694; and see *James v. Vane*, 29 L. J., Q. B. 169.

258.  
Before delivery of defence.

**4.** If the defendant pays money into Court before delivering his defence, he shall serve upon the plaintiff a notice specifying both the fact that he has paid in such money, and also the claim or cause of action in respect of which such payment has been made. Such notice shall be in the Form No. 3 in Appendix B., with such variations as circumstances may require.

For the form referred to, see *post*, p. 544. This rule only applies to payment into Court in satisfaction.

259.  
Payment out of Court where money paid in satisfaction.

**5.** In the following cases of payment into Court under this Order, viz.:—

- (a) When payment into Court is made before delivery of defence:
- (b) When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court is made, is not denied in the defence:
- (c) When payment into Court is made with a defence setting up a tender of the sum paid:

Tender.

the money paid into Court shall be paid out to the plaintiff on his request, or to his solicitor on the plaintiff's written authority, unless the Court or a Judge shall otherwise order.

*Payment out, &c.*—As to payment, delivery, and transfer of funds out of Court, see S. C. Funds Rules, 1886, rr. 44—68, *post*, pp. 738—746.

*Defence of tender.*—The rule as to tender is an affirmation of the practice of the Common Law Courts: *Le Grew v. Cooke*, 1 B. & P. 333; Bullen & Leake, ed. 3, p. 694. A plea of tender cannot be set up in an action for unliquidated damages: *Davys v. Richardson*, 21 Q. B. D. 202.

260.  
With defence denying liability.

**6.** When the liability of the defendant, in respect of the claim or cause of action in satisfaction of which the payment into Court has been made, is denied in the defence, the following rules shall apply:—

- (a) The plaintiff may accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, in which case he shall be entitled to have the money paid out to him as herein-after provided, notwithstanding the defendant's denial of liability, whereupon all further proceedings, in respect of such claim or cause of action, except as to costs, shall be stayed: or the plaintiff may refuse to accept the money in satisfaction and reply accordingly, in which case the money shall remain in Court subject to the provisions hereinafter mentioned:

Acceptance by plaintiff.

- (b) If the plaintiff accepts the money so paid in, he shall, after service of such notice in the Form No. 4, in Appendix B.,



as is in Rule 7 mentioned, or after delivery of a reply accepting the money, be entitled to have the money paid out to himself on request, or to his solicitor on the plaintiff's written authority, unless the Court or a Judge shall otherwise order :

Order XXII.  
rr. 6, 7.

- (c) If the plaintiff does not accept, in satisfaction of the claim or cause of action in respect of which the payment into Court has been made, the sum so paid in, but proceeds with the action in respect of such claim or cause of action, or any part thereof, the money shall remain in Court and be subject to the order of the Court or a Judge, and shall not be paid out of Court except in pursuance of an order. If the plaintiff proceeds with the action in respect of such claim or cause of action, or any part thereof, and recovers less than the amount paid into Court, the amount paid in shall be applied, so far as is necessary, in satisfaction of the plaintiff's claim, and the balance (if any) shall, under such order, be repaid to the defendant. If the defendant succeeds in respect of such claim or cause of action, the whole amount shall, under such order, be repaid to him.

Non-acceptance by plaintiff.

This rule was introduced in 1883. As to the former practice, see *Berdan v. Greenwood*, 3 Ex. D. 251.

*Payment with defence denying liability—Cases.*—The defendant paid in 5*l.* (which the plaintiff did not accept), with a defence denying liability, and the plaintiff obtained judgment for 5*l.*; it was held that the defendant had established a complete defence: *Wheeler v. United Telephone Co.*, 13 Q. B. D. 597. See, also, *Goutard v. Carr*, 53 L. J., Q. B. 55. A defendant paid money into Court without regard to the regulations prescribed by the rules, and the S. C. Funds Rules, 1884, rr. 30, 44. A defence was delivered denying liability, and stating that the sum paid into Court was sufficient to satisfy the claim of the plaintiff if any should be established. The plaintiff took the money out of Court, and then continued the proceedings in the action. Held, that he must either keep the money and let all further proceedings, except as to costs, be stayed, or pay the money into Court again, and proceed with his action: *Re Earl Stamford*, 33 W. R. 909.

*Payment into Court with plea of tender.*—Where in an action for unliquidated damages the defendant pleaded tender before action, and paid the sum into Court, with a defence setting up tender, and plaintiff without an order took such money out of Court, but proceeded with his action and failed, it was held that the money ought not to have been paid out except in pursuance of an order: *Davys v. Richardson*, 20 Q. B. D. 722. But the Court of Appeal reversed the decision so far as it ordered payment by the solicitor of the plaintiff: *S. C.*, 21 Q. B. D. 202.

*Acceptance in satisfaction.*—See next rule.

*Subject to the order of the Court.*—This means subject to the final order of the Court after the case has been tried or the defence withdrawn: *Maple v. Earl of Shrewsbury*, 35 W. R. 819.

*Payment out.*—As to the mode of getting the money out of Court under clauses (a) and (b) of this rule, see S. C. Funds Rules, 1886, r. 44, *post*, p. 738.

7. The plaintiff, when payment into Court is made before delivery of defence, may within *four days* after the receipt of notice of such payment, or when such payment is first signified in a defence, may, before reply, accept in satisfaction of the claim or cause of action in respect of which such payment has been made, the sum so paid in, in which case he shall give notice to the defendant in the Form No. 4 in Appendix B, and shall be at liberty, in case the

261.

Acceptance in satisfaction.  
[O. XXX.  
r. 4.]

**Order XXII.**  
**rr. 7—11.**

**Notice.**

entire claim or cause of action is thereby satisfied, to tax his costs after the expiration of *four days* from the service of such notice, unless the Court or a Judge shall otherwise order, and in case of non-payment of the costs within *forty-eight hours* after such taxation, to sign judgment for his costs so taxed.

For the form here referred to, see *post*, p. 544, and for a form of judgment for costs, see *post*, p. 589.

*Former practice.*—Formerly, by s. 73 of the C. L. P. Act, 1852, the plaintiff, in the case dealt with by this rule, accepted the sum in satisfaction by his replication.

*Effect of Rule—Cases.*—This rule contains provisions the same in substance as those previously in force in the Common Law Courts. The money may be paid in either in respect of the whole of the plaintiff's claim, or of part of it. This throws upon the plaintiff the election between two courses. He may accept the money in satisfaction of the claim in respect of which it is paid in, in which case this rule gives him his costs; or he may abstain from doing so. In the latter case the issue to be tried in the action is, whether the sum paid in is sufficient or not, and if that issue is found against the plaintiff, there is nothing in the rules to give him as of right any part of the costs. Thus, where 200*l.* was paid into Court generally, and the action was referred before delivery of pleadings, costs to abide the event, and the 200*l.* was found to be sufficient, it was held that the defendant should be allowed the whole costs: *Langridge v. Campbell*, 2 Ex. D. 281. In *McIlverath v. Green*, 14 Q. B. D. 766, the plaintiff, who sued for two breaches of contract, and took out of Court in full satisfaction of his claim the money paid in, in respect of one breach, was held entitled to his costs. This decision overruled that in *Croftland v. Routledge*, W. N. (1883), 228. In an action against the acceptor of a bill for 100*l.*, where the defendant paid 30*l.* into Court and the plaintiff took this money out and gave notice to the defendant in Form 4, App. B, it was held that indorsers, who had paid the balance of the bill, were entitled to sue the acceptor for it: *Jones v. Whittaker*, W. N. (1887), 132.

*Discretion of Court.*—The Court in the exercise of its discretion may give the plaintiff his costs up to the time of payment into Court: *Buckton v. Higgs*, 4 Ex. D. 174; *Gretton v. Mees*, 7 Ch. D. 839. The control over costs given to the Court by O. LXV., r. 1 is complete. Thus where money was paid into Court, and the plaintiff did not give notice that he accepted it in satisfaction until after the expiration of the four days, it was held that the Court might still in the exercise of its discretion give him his costs: *Greaves v. Fleming*, 4 Q. B. D. 226; see, also, *Broadhurst v. Willey*, W. N. (1876), 21. See, too, *Suckling v. Gabb*, 36 W. R. 175, in which case the defendant paid money into Court (under an order made upon a summons for judgment under O. XIV.) as to part of the claim, and the plaintiff, after issue joined, discontinued the action. It was held that he was entitled to his costs up to the time of payment into Court.

*Where rule applies.*—This rule only applies to cases within r. 1, *i. e.*, to an action to recover debt or damages: *Nichols v. Evens*, 22 Ch. D. 611.

**8.** Where money is paid into Court in two or more actions which are consolidated, and the plaintiff proceeds to trial in one, and fails, the money paid in and the costs in all the actions shall be dealt with under this Order in the same manner as in the action tried.

**9.** A plaintiff may, in answer to a counter-claim, pay money into Court in satisfaction thereof, subject to the like conditions as to costs and otherwise as upon payment into Court by a defendant.

This rule was introduced in 1883, and supplies an omission in the former rules.

**10.** Where money is paid into Court in the Queen's Bench Division under the certificate of a Master or Associate, such payment must be expressly authorised in such certificate.

**11.** Money paid into Court under an order of the Court or a Judge or certificate of a Master or Associate shall not be paid out of Court

262.

Consolidated  
actions.

263.

Counter-  
claims.

264.

Payment  
under certifi-  
cate.

265.

Payment out  
under order.



except in pursuance of an order of the Court or a Judge: Provided that, where before the delivery of defence money has been paid into Court by the defendant pursuant to an order under the provisions of Order XIV., he may (unless the Court or a Judge shall otherwise order), by his pleading, appropriate the whole or any part of such money, and any additional payment if necessary, to the whole or any specified portion of the plaintiff's claim; and the money so appropriated shall thereupon be deemed to be money paid into Court pursuant to the preceding Rules of this Order relating to money paid into Court, and shall be subject in all respects thereto.

**Order XXII.**  
**rr. 11—15.**

Appropriation  
of money paid  
in.

*Appropriation, &c.*—The proviso to this rule enables a defendant to appropriate the money he has already paid into Court without taking out a special summons for that purpose. As to the mode of dealing with money so appropriated, see S. C. Funds Rules, 1886, rr. 43, 44, *post*, p. 738.

**12.** In the Chancery Division, the manner of payment into and out of Court, and the manner in which money in Court shall be dealt with, shall be subject to the Rules for the time being in force under the Court of Chancery Funds Act, 1872.

266.  
Dealing with  
funds in Court  
in Chancery  
Division.

See the S. C. Jud. (Funds) Act, 1883, *post*, p. 717, and the S. C. Funds Rules, 1886, *post*, pp. 724—772.

**13.** In the Queen's Bench Division, unless the cause or matter is proceeding in a District Registry, and unless and until any other provision shall be made by Parliament in that behalf, money paid into Court shall be paid into the Bank of England (Law Courts Branch), and the manner of payment into and out of Court, and the manner in which money in Court shall be dealt with, shall be subject to the regulations contained in Appendix M, which the Masters of the Supreme Court, or any four of them, with the consent of the Governor and Company of the Bank of England, may from time to time modify by way of addition or substitution: Provided that if any Act shall be passed relating to funds in Court in any Division of the Supreme Court, all money so paid into Court shall be subject to such rules as may be made under that Act, so far as applicable thereto.

267.  
Queen's Bench  
money.

For the rules which have been made under the S. C. Jud. (Funds) Act, 1883, see the S. C. Funds Rules, 1886, *post*, p. 724, and particularly rules 32, 33, 44.

**14.** All money standing in Court in the Queen's Bench Division on the day on which these Rules come into operation shall thereupon be subject in all respects to the provisions of this Order.

268.  
Existing  
money in  
Q. B. D.

**15.** In any cause or matter in the Queen's Bench Division in which a sum of money has been awarded to or recovered by an infant, or person of unsound mind not so found by inquisition, the Court or a Judge may at or after the trial order that the whole or any part of such sum shall be paid into Court to the credit of an account intituled in the cause or matter; and any sum so paid into Court, and any dividends or interest thereon, shall be subject to such Orders as may from time to time be made by the Court or a Judge concerning the same, and may either be invested, or be paid out of Court, or transferred to such persons, to be held and applied

269.  
Money re-  
covered by  
infant, &c.



**Order XXII.  
rr. 15—20.**

upon and for such trusts and in such manner as the Court or Judge shall direct.

Small sums can be ordered to be paid into the Savings Bank: *Elliott v. E.*, 54 L. J., Ch. 1142.

270.

Investment,  
&c.

**16.** Money paid into Court or securities purchased under the provisions of the last preceding Rule, and the dividends or interest thereon, shall be sold, transferred, or paid out to the party entitled thereto, pursuant to the order of the Court or a Judge.

*Effect of Rule.*—The provisions of this and the preceding rule confer an important power on Judges of the Queen's Bench Division. For the mode of investment, see S. C. Funds Rules, 1886, *post*, p. 746.

271.

Investment of  
cash under  
control of  
Court.

**17.** *Cash under the control of or subject to the order of the Court may be invested in Bank Stock, East India Stock, Exchequer Bills, and 2l. 10s. per cent. annuities, and upon mortgage of freehold and copyhold estates respectively in England and Wales, as well as in Consolidated, Reduced, and New 3l. per cent. annuities.*

This rule is adapted from Gen. Ord., 1 Feb., 1861, r. 1, issued under 23 & 24 Vict. c. 38, s. 10. It was annulled by R. S. C., August, 1888, r. 1. For the substituted rule, see *post*, p. 516a.

*"Cash under the control of the Court."*—This term includes cash standing to the credit of any cause or matter, as, *e.g.*, money paid into Court under the Lands Clauses Act, 1845: *Ex parte St. John's College, Oxford*, 22 Ch. D. 93; or under a private Act: *Jackson v. Tyas*, W. N. (1883), 91.

*"East India Stock."*—This term includes New Three and a-half per cent. East India Stock: *Ex parte St. John's College, Oxford*, 22 Ch. D. 93.

*Service of application.*—Where the fund was paid in under an Act which empowered the persons making claim to the fund to apply for its investment in the public funds, and did not contain any provisions making service on other persons necessary, an order was made, on the application of the tenant for life, for its investment in East India Stock: *Re Adams*, W. N. (1868), 58.

272.

Application to  
convert stock.

**18.** Every application for the purpose of the conversion of any stocks, funds, or securities into any other stocks, funds, or securities authorised by the last preceding Rule, shall be served upon the trustees thereof, if any, and upon such other persons, if any, as the Court or Judge shall think fit.

Adapted from Gen. Ord., 1 Feb., 1861, r. 2.

*Change of investment.*—See, for the cases collected, Morgan, p. 369; Dan. Pr., pp. 1766, 1767.

273.

Admiralty  
actions.

**19. (*Money in Admiralty Actions.*)**

This rule provided that money in Admiralty actions should be paid to the account of the Admiralty Registrar at the Bank of England, but the rule is now superseded by rule 34 of the S. C. Funds Rules, 1886, *post*, p. 736, which provides that Admiralty funds, like other Supreme Court funds, shall be paid into the Pay Office.

274.

Payment out  
in Admiralty  
actions.

**20.** Money paid into Court in an Admiralty action shall not be paid out of Court except in pursuance of an order of the Court or a Judge.

This rule is taken from Adm. Rules, 1859, r. 128.

21. A solicitor desiring to prevent the payment of money out of Court in an Admiralty action shall file a notice, and thereupon a caveat shall be entered in a book to be kept in the Admiralty Registry, called the "Caveat Payment Book."

Order XXII.  
r. 21.

275.

Caveat Payment Book.

This rule is taken from Adm. Rules, r. 130. The duration of a caveat is six months: O. LXIV., r. 15, *post*, p. 471.

## ORDER XXIII.

### REPLY AND SUBSEQUENT PLEADINGS.

Order XXIII.  
rr. 1—4.

1. A plaintiff shall deliver his reply, if any, in Admiralty actions within *six days*, and in other actions within *twenty-one days*, after the defence or the last of the defences shall have been delivered, unless the time shall be extended by the Court or a Judge.

276.

Delivery of reply or subsequent pleading.

Under the Rules of 1875 the time for reply in all Divisions was *three weeks*.

[Cf. O. XXIV. r. 1.]

*What may be replied.*—As to what matters may be replied, see O. XIX., rr. 2, 16—18, *ante*, pp. 202, 210, and notes thereto; Dan. Pr., pp. 521, 522; Chitt. Arch., p. 312; *Hall v. Eve*, 4 Ch. D. 341; *Williamson v. L. & N. W. Ry. Co.*, 12 Ch. D. 787.

*Time.*—As to extension of time for pleading, the computation of time, and vacations, see O. LXIV., rr. 3—8, *post*, pp. 468—470. An application to enlarge time for delivery of reply ought to be granted, notwithstanding default, on payment of costs: *Eaton v. Storer*, 22 Ch. D. 91; and see *Graves v. Terry*, 9 Q. B. D. 170.

*Further reply.*—As to the time for delivering a further reply to a counter-claim founded upon matter arising after reply or the time for reply, see O. XXIV., r. 2, *post*, p. 231.

*Effect of non-delivery of reply.*—By O. XXVII., r. 13, *post*, p. 241, non-delivery of reply is a close of the pleadings, and a denial of the last pleading.

2. No pleading subsequent to reply other than a joinder of issue shall be pleaded without leave of the Court or a Judge, and then shall be pleaded only upon such terms as the Court or Judge shall think fit.

277.

Leave for subsequent pleadings.

[O. XXIV. r. 2.]

3. Subject to the last preceding Rule, every pleading subsequent to reply shall be delivered within *four days* after the delivery of the previous pleading, unless the time shall be extended by the Court or a Judge.

278.

Time for delivery.

[O. XXIV. r. 3.]

*Effect of non-compliance.*—See note to rule 1, and O. XXVII., r. 13, *post*, p. 241, as to the effect of not complying with this rule.

4. Where a counter-claim is pleaded, a reply thereto shall be subject to the Rules applicable to statements of defence.

279.

Reply to counter-claim.

*Effect of Rule.*—This rule was introduced in 1883, and appears to be intended merely to emphasise O. XIX., r. 17, *ante*, p. 210. The rules relating specially to defences are contained in O. XXI. It is conceived that the provisions of rules 6—8 of that Order, which relate to the time for delivering a defence, are not imported by this rule; and that the time for replying to a counter-claim will be the same as for replying to a defence. It would seem, however, that if a new party is brought in to a counter-claim he must deliver his reply in *ten days* instead of *twenty-one*: see O. XXI., r. 14, *ante*, p. 220.

**Order XXIII.**  
rr. 4—6.

*Counter-claim to counter-claim.*—A reply to a counter-claim may contain a claim for damages arising out of the same transaction as the counter-claim, though after the issue of the writ: *Toke v. Andrews*, 8 Q. B. D. 428.

*Default of pleading to counter-claim.*—Where the defendant to a counter-claim neglects to plead thereto, the counter-claimant is entitled to move for judgment: *Street v. Crump*, 25 Ch. D. 68.

280.  
Close of  
pleadings.  
[Cf. O. XXV.]

5. As soon as any party has joined issue upon the preceding pleading of the opposite party simply without adding any further or other pleading thereto, or has made default as mentioned in Order XXVII., Rule 13, the pleadings as between such parties shall be deemed to be closed.

*Default in delivering reply to counter-claim.*—By O. XXVII., r. 13, *post*, p. 241, non-delivery of a reply operates as a denial of the last pleading. Having regard, however, to the terms of rule 4, and of O. XIX., rr. 3, 17, which treat a counter-claim as a cross-action, this rule does not appear to apply to the case of default in delivering a reply to a counter-claim.

281.  
New assign-  
ment  
abolished.  
[Cf. O. XIX.  
r. 14.]

6. No new assignment shall be necessary or used. But everything which was formerly alleged by way of new assignment may hereafter be introduced by amendment of the statement of claim, or by way of reply.

*Effect of Rule.*—The necessity for new assignments arose solely from the generality of Common Law pleadings, and the absence of detail in those matters of fact on which the identification of the real cause of action depends. Under the present system, in which the statement of claim discloses the facts of the case, it is unlikely that any such misapprehensions as those which gave rise to new assignments need arise. If such misapprehension does arise, it may, under this rule, be corrected either by amendment of the statement of claim or by the reply. Under the corresponding rule of 1875 (O. XIX., r. 14), it could only be corrected by amendment of the statement of claim.

*Amendment.*—By O. XXVIII., r. 2, *post*, p. 244, the amendment may be made without leave.

*New ground of claim.*—Apart from this rule no new ground of claim may be raised by a reply (see O. XIX., r. 16), except in the case of a counter-claim to a counter-claim: *Toke v. Andrews*, 8 Q. B. D. 428.

**Order XXIV.**  
r. 1.

## ORDER XXIV.

## MATTERS ARISING PENDING THE ACTION.

282.  
Defence to  
claim.  
[O. XX. r. 1.]  
Defence to  
counter-claim.

1. Any ground of defence which has arisen after action brought, but before the defendant has delivered his statement of defence, and before the time limited for his doing so has expired, may be raised by the defendant in his statement of defence, either alone or together with other grounds of defence. And if, after a statement of defence has been delivered, any ground of defence arises to any set-off or counter-claim alleged therein by the defendant, it may be raised by the plaintiff in his reply, either alone or together with any other ground of reply.

*Counter-claim to counter-claim.*—A plaintiff may counter-claim in his reply to the defendant's counter-claim in respect of a cause of action accrued after writ issued, but arising at the same time, and out of the same transaction as the defendant's counter-claim: *Toke v. Andrews*, 8 Q. B. D. 428.

*Form of Pleading.*—A counter-claim arising after action brought should be so stated in the pleadings: *Ellis v. Munson*, 35 L. T. 585.



2. Where any ground of defence arises after the defendant has delivered a statement of defence, or after the time limited for his doing so has expired, the defendant may, and where any ground of defence to any set-off or counter-claim arises after reply, or after the time limited for delivering a reply, has expired, the plaintiff may, within *eight days* after such ground of defence has arisen, or at any subsequent time by leave of the Court or a Judge, deliver a further defence or further reply as the case may be, setting forth the same.

The words "or at any subsequent time" were introduced into this rule in 1883.

*Counter-claim.*—A counter-claim and set-off is a defence within this rule; and the plaintiff was held entitled, on delivery of a confession of the defence, under r. 3, *infra*, to his costs up to the time of the defendant pleading the set-off arising after action: *Wood v. Goodwin*, W. N. (1884), 17.

3. Whenever any defendant, in his statement of defence, or in any further statement of defence as in the last Rule mentioned, alleges any ground of defence which has arisen after the commencement of the action, the plaintiff may deliver a confession of such defence (which confession may be in the Form No. 5 in Appendix B, with such variations as circumstances may require), and may thereupon sign judgment for his costs up to the time of the pleading of such defence, unless the Court or a Judge shall, either before or after the delivery of such confession, otherwise order.

*Forms.*—For the form here referred to, see *post*, p. 545, and for a form of judgment, see Appendix F, No. 15, *post*, p. 588.

*Effect of Order.*—The provisions of this Order are in substance the same, with a few exceptions, as those of ss. 68 and 69 of the C. L. P. Act, 1852, and rules 22 and 23 of R. G. T. T., 1853. But by those rules the right to confess the plea, and take judgment for costs, was expressly excluded, where the matter arising after action was pleaded by one of several defendants. There is no such limitation in this Order. The extension also in express terms, of the right of setting up a defence arising after action brought to the case of a plaintiff answering a set-off or counter-claim, is new. As to when matter so arising could formerly be replied, see *Eyton v. Littledale*, 4 Exch. 159; *Newington v. Levy*, L. R., 6 C. P. 180. It will be observed that the right to confess under rule 3 is limited to the plaintiff.

Under the rules referred to as in force before the Judicature Acts, where a defence arising after plea was pleaded, in addition to other defences previously pleaded in bar of the action, the plaintiff might confess the plea, and have his costs; the other defences falling to the ground. And it appears to be the same under the present rules: *Foster v. Gamgee*, 1 Q. B. D. 666.

*Bankruptcy.*—These rules apply where the defendant is adjudicated bankrupt after action brought upon an act of bankruptcy committed before action brought: *Champion v. Formby*, 7 Ch. D. 373.

*Counter-claims.*—These rules apply to counter-claims in the nature of a pecuniary set-off arising after action brought: *Ellis v. Munson*, 35 L. T. 585; and they have been held to apply to counter-claims generally: *Beddall v. Maitland*, 17 Ch. D. 174. See, however, the observations of Jessel, M. R., in *Original Hartlepool Collieries Co. v. Gibb*, 5 Ch. D. 713.

*Payment into Court.*—Payment into Court is not a defence within the meaning of this rule: *Callander v. Hackins*, 2 C. P. D. 592.

*Confession of defence.*—Such a confession of a defence as that here provided for does not operate as a mere discontinuance of the action, or leave the plaintiff at liberty to commence a fresh action. It is a determination of the matters in litigation, and precludes any second action for the same cause: *Newington v. Levy*, L. R., 6 C. P. 180.

The delivery by the plaintiff of a "confession of defence" does not give him an absolute right to sign judgment, and a plea by the defendants of a ground of defence arising since action brought does not amount to a waiver of the

Order XXIV.  
rr. 2, 3.

283.

Defence after pleading.

[Cf. O. XX. r. 2.]

284.

Confession of defence.

[O. XX. r. 3.]

Costs.

**Order XXIV.** defence existing at the time of action brought: *Harrison v. Abergavenny*, 57 L. T. 360.

r. 3.

In *Bridgetown Waterworks Co. v. Barbados Water Supply Co.*, 38 Ch. D. 376, the defendants delivered a further defence in respect of matters arising after the commencement of the action. The plaintiffs delivered a confession of the further defence, and signed judgment for costs against the defendants. The judgment for costs was set aside on terms of the defendants withdrawing their further defence.

**Order XXV.**  
rr. 1—3.

## ORDER XXV.

### PROCEEDINGS IN LIEU OF DEMURRER.

285.  
Abolition of  
demurrers.

#### 1. No demurrer shall be allowed.

*Effect of Order.*—This Order effects an important change in the practice in all Divisions. A party desirous of raising a point of law may now do so in his pleading; and the points of law which under the former practice would have been determined on demurrer will now be ordinarily disposed of at the trial, or on further consideration. The effect of the change is that it is no longer open to a party to raise objections in law which merely drive the opposite party to amend his pleading without affecting the result of the action. See, as to this Order, *Burstell v. Beyfus*, 26 Ch. D. 35. Although proceedings under this Order take the place of demurrers in the sense that the Court is enabled, when it sees no reasonable ground of action or defence, to put an end to the action or defence, it is not bound to regard the case with the same strictness as under the old practice on demurrer, the Court having now more regard to the reasonableness or unreasonableness of the claim or defence: *Dadswell v. Jacobs*, 34 Ch. D. 278.

286.  
Pleading  
points of law.

**2.** Any party shall be entitled to raise by his pleading any point of law, and any point so raised shall be disposed of by the Judge who tries the cause at or after the trial, provided that by consent of the parties, or by order of the Court or a Judge on the application of either party, the same may be set down for hearing and disposed of at any time before the trial.

*Forms.*—For forms of pleadings raising points of law, see App. E, Sect. III., *post*, p. 584.

*Application.*—For forms of notice of motion or summons that points of law may be set down, see Dan. Forms, p. 244; Chitt. Forms, p. 179.

*Want of parties.*—Objection for want of parties cannot be taken as a point of law. The question is dealt with by O. XVI., r. 11, *ante*, p. 176; see *Werdermann v. Société Générale d'Electricité*, 19 Ch. D. 246, decided on the old rules as to demurrer.

*Cases.*—For cases in which points of law have been raised under this rule, see *O'Brien v. Tyssen*, 28 Ch. D. 372; *Priestman v. Thomas*, 9 P. D. 210; *Percival v. Dunn*, 29 Ch. D. 128; *L. C. & D. Ry. v. S. E. Ry.*, 53 L. T. 109.

*Setting down point of law.*—Where, by consent of the parties, an action has been set down for hearing under this rule, before the trial, on a point of law, the decision of which will substantially dispose of the whole action, it is not entitled to precedence over non-witness actions, but must take its place in the general list. If only a preliminary point is to be raised, application should be made to the Court as to setting it down for hearing: *Re Thorniley*, 53 L. J., Ch. 499.

287.  
Effect of deci-  
sion of points  
of law.

**3.** If, in the opinion of the Court or a Judge, the decision of such point of law substantially disposes of the whole action, or of any distinct cause of action, ground of defence, set-off, counter-claim, or



reply therein, the Court or Judge may thereupon dismiss the action or make such other order therein as may be just.

Order XXV.  
rr. 3, 4.

See *O'Brien v. Tyssen*, 28 Ch. D. 372; *Percival v. Dunn*, 29 Ch. D. 128; *Viney v. Norwich Fire Insurance Society*, 57 L. J., Q. B. 82.

4. The Court or a Judge may order any pleading to be struck out, on the ground that it discloses no reasonable cause of action or answer, and in any such case or in case of the action or defence being shown by the pleadings to be frivolous or vexatious, the Court or a Judge may order the action to be stayed or dismissed, or judgment to be entered accordingly, as may be just.

288.  
Striking out  
pleadings.

*Application: how made.*—In the Chancery Division by motion or summons; in the Queen's Bench Division by summons: see *Dan. Forms*, p. 245; *Chitt. Forms*, p. 179. Under the first branch of this rule affidavits are not admissible, though they are under the last part: *Republic of Peru v. Peruvian Guano Co.*, 36 Ch. D. 489.

*Inherent jurisdiction.*—Formerly, without any express rule on the subject, the Courts exercised the power of staying frivolous or vexatious actions, and thus preventing their powers from being abused: *Castro v. Murray*, 10 Ex. 213; *Jacobs v. Raven*, 30 L. T. 366; *Dawkins v. Prince Edward of Saxe-Weimar*, 1 Q. B. D. 499; *Ex parte Griffin*, 12 Ch. D. 480. Apart from the rule the Queen's Bench Division has an inherent jurisdiction to stay a frivolous or vexatious action: *Blair v. Cordner*, 36 W. R. 64.

*Effect of Rule.*—This rule enables the Court to deal in an easy and summary manner with demurrable actions, and affirms the inherent power of the Court to protect itself from the abuse of its procedure by the bringing of frivolous and vexatious actions: *Metropolitan Bank v. Pooley*, 10 App. Cas. 210. See, also, *Willis v. Earl Beauchamp*, 11 P. D. 59; *Ker v. Williams*, 29 Sol. J. 681.

*Reasonable cause of action.*—As to these words, see *Shafto v. Bolckow, Taughan & Co.*, 34 Ch. D. 725, at p. 728. A pleading will not be struck out under this rule on the ground that it discloses no reasonable cause of action, unless it is frivolous: *Re Batthyany*, 32 W. R. 379. Where a statement of claim discloses some ground of action, the mere fact that the plaintiff is not likely to succeed at the trial is no ground for its being struck out: *Boaler v. Holder*, 54 L. T. 298.

Where the Court sees that a substantial case is presented, it will decline to strike out the pleading, but where the pleading discloses a case which the Court is satisfied will not succeed, it should be struck out, and an end put to litigation: *Republic of Peru v. Peruvian Guano Co.*, 36 Ch. D. 489.

*Striking out defence.*—Where plaintiffs claimed that defendant should produce documents to any agent they might appoint, and defendant alleged in his defence that the person appointed was an improper person, an application to strike out the defence was dismissed: *Dadswell v. Jacobs*, 34 Ch. D. 278. As to striking out a counter-claim seeking to have accounts taken of a partnership in respect of which an order had been made in a foreign Court, see *Mutrie v. Binney*, 35 Ch. D. 614. Where the matters stated in the defence had all been litigated in a former action and found adversely to the defendant, the whole defence was ordered to be struck out: *Magrath v. Reichel*, 57 L. T. 850.

*Cases.*—A statement of claim asking to set aside a marriage settlement on the ground of fraudulent misrepresentation by the wife was struck out under this rule as vexatious: *Johnston v. Johnston*, 52 L. T. 76. In *Burstall v. Beyfus*, 26 Ch. D. 35, it was held that to make solicitors, or others, parties to an action, without seeking any relief against them except payment of costs or discovery, was vexatious. An action brought by executors before probate was stayed: *Tarn v. Commercial Banking Co.*, 12 Q. B. D. 294. An action brought by a bankrupt for maliciously procuring his adjudication, so long as the adjudication itself has not been set aside, may be dismissed as frivolous and vexatious: *Metropolitan Bank v. Pooley*, 10 App. Cas. 210. A defendant against whom no cause of action was shown was ordered to be struck out of the proceedings with costs: *Amos v. Herne Bay Co.*, 54 L. T. 264. See further *Boddington v. Rees*, 52 L. T. 209; *Parsons v. Burton*, W. N. (1883), 215. A defendant who has delivered a defence to a statement of claim cannot, if the plaintiff delivers an amended statement of claim, showing the same cause of action, apply to strike



**Order XXV.**  
**rr. 4, 5.**

it out under this rule: *Jenkins v. Rees*, 33 W. R. 929. The Court has jurisdiction, even after defence and reply, to stay an action under this rule: *Tucker v. Collinson*, 34 W. R. 354.

*Striking out pleadings.*—As to the power to strike out allegations in pleadings which are unnecessary, scandalous, and embarrassing, see O. XIX., r. 27, *ante*, p. 212.

*Staying proceedings generally.*—See *ante*, pp. 18, 19.

289.  
Declaratory  
judgment.

5. No action or proceeding shall be open to objection, on the ground that a merely declaratory judgment or order is sought thereby, and the Court may make binding declarations of right whether any consequential relief is or could be claimed, or not.

*Former practice.*—Previous to the Chancery Procedure Act, 1852, 15 & 16 Vict. c. 86, s. 50, it was held that the Courts in this country had not the power which the Courts in Scotland had of declaring rights before the parties interested had sustained actual damage: *Grove v. Bastard*, 2 Phillips, 621.

*Chancery Procedure Act, 1852, s. 50.*—S. 50 of the Act referred to empowered the Court of Chancery “to make binding declarations of right without granting consequential relief;” but it was held that the effect of the statute was merely to remove the objection that previously existed where a plaintiff who might have asked for consequential relief prayed merely for a declaration of his right; and accordingly that the Courts could not make declarations as to purely future rights: *Jackson v. Turnley*, 1 Drew. 617; *Rooke v. Lord Kensington*, 2 K. & J. 753; *Lady Langdale v. Briggs*, 8 De G., M. & G. 391, at p. 428; *Cox v. Barker*, 3 Ch. D. 359; *Hampton v. Holman*, 5 Ch. D. 183; *Curtis v. Sheffield*, 21 Ch. D. 1. The later cases showed a disposition to put a more liberal construction on the words of the statute. See further Dan. Pr., p. 791; Morgan, p. 372.

*Effect of Rule.*—The words of the present rule are wider than those of the statute, inasmuch as they enable the Court to make declarations of right “whether any consequential relief is or could be claimed or not.” The jurisdiction will, however, be exercised with great caution: *Austen v. Collins*, 54 L. T. 903. See, too, *Re Berens*, W. N. (1888), 95.

**Order XXVI.**  
**r. 1.****ORDER XXVI.****DISCONTINUANCE.**

290.  
Discontinu-  
ance.  
[Of O. XXIII.  
r. 1.]

Costs.

Withdrawal  
of record.

Striking out  
defence.

1. The plaintiff may, at any time before receipt of the defendant's defence, or after the receipt thereof before taking any other proceeding in the action (save any interlocutory application), by notice in writing, wholly discontinue his action against all or any of the defendants or withdraw any part or parts of his alleged cause of complaint, and thereupon he shall pay such defendant's costs of the action, or, if the action be not wholly discontinued, the costs occasioned by the matter so withdrawn. Such costs shall be taxed, and such discontinuance or withdrawal, as the case may be, shall not be a defence to any subsequent action. Save as in this Rule otherwise provided, it shall not be competent for the plaintiff to withdraw the record or discontinue the action without leave of the Court or a Judge, but the Court or a Judge may before, or at, or after the hearing or trial, upon such terms as to costs, and as to any other action, and otherwise, as may be just, order the action to be discontinued, or any part of the alleged cause of complaint to be struck out. The Court or a Judge may, in like manner, and with the like discretion as to terms, upon the application of a defendant, order the whole or any part of his alleged grounds of defence or

counterclaim to be withdrawn or struck out, but it shall not be competent to a defendant to withdraw his defence, or any part thereof, without such leave.

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r. 1.

*Former practice.*—In the Common Law Courts, it was open to the plaintiff at any time before judgment to discontinue his action upon payment of costs: R. G., H. T. 1853, Rule 23. Discontinuance was an abandonment of the pending action; but it left the plaintiff open to commence another action for the same cause, if he thought fit.

In Chancery, before a defendant appeared, the plaintiff might have his bill dismissed as against him, without costs; after appearance, but before decree, on payment of costs; after decree, only by consent.

It was also at Common Law the right of the party who entered a cause for trial to withdraw the record at any time before the jury were sworn to try the cause; in which case he had to pay the costs of the day. The effect of withdrawing the record was to revoke the entry of the cause for trial; but it left the right of re-entering the cause for trial subsequently.

*Effect of Rule.*—This rule differs from the corresponding rule of 1875 (O. XXII., r. 1), by expressly empowering the plaintiff to discontinue against one or more of the defendants while continuing the action against the rest.

*Defence raising matters arising pending action.*—If the statement of defence sets up matters arising after the issue of the writ of summons, the truth of which the plaintiff cannot deny, and which afford a good answer in law, the proper course for the plaintiff will be, not to discontinue under this Order, but to enter a confession of the defence, and take judgment for his costs under O. XXIV., r. 3, *ante*, p. 231.

*Effect of discontinuance on counter-claim.*—By O. XXI., r. 17, *ante*, p. 221, the defendant may proceed with his counter-claim, although the plaintiff discontinues his action.

*Notice in writing.*—A letter by the plaintiff's solicitors to the defendant's solicitors, stating that they "were instructed to proceed no further with the action," was held a sufficient notice of discontinuance: *The Pommerania*, 4 P. D. 195.

*Effect of notice.*—Notice of discontinuance vacates a notice of appeal previously given by the plaintiff, and puts an end to the appeal, even against the defendant's wish: *Conybeare v. Lewis*, 13 Ch. D. 469.

*Effect of discontinuance generally.*—Mere discontinuance does not preclude a plaintiff from substantiating his claim in other proceedings: *The Ardandhu*, 11 P. D. 40, at p. 43; *S. C.*, affirmed *sub nom.*, *The Kronprinz*, 12 App. Cas. 256. Where a plaintiff who had given an undertaking as to damages discontinued his action, an inquiry as to damages was directed, even after a delay of eleven months: *Newcomen v. Coulson*, 7 Ch. D. 764.

*Discontinuance by leave of the Court.*—Leave refused, after a reference to an arbitrator, to state a special case, and statement of case by him in favour of defendant: *Stahlschmidt v. Walford*, 4 Q. B. D. 217. See, too, *Mattheus v. Antrobus*, 49 L. J., Ch. 80. An application for leave to discontinue will in general be granted only on the terms of the applicant paying the costs of the action: *The J. H. Henkes*, 12 P. D. 106. Upon an application by the plaintiff for leave to discontinue, there is no jurisdiction to make the defendant pay any costs of a defence, which, if undisputed, or if it had been found in the defendant's favour, would have disentitled the plaintiff from maintaining his action: *Lambton v. Parkinson*, 35 W. R. 545; see also *Dicks v. Yates*, 18 Ch. D. 76. The Judge cannot delegate the exercise of his discretion as to costs: *Lambton v. Parkinson*.

*Test action.*—As to discontinuance of a test action, see *Robinson v. Chadwick*, 7 Ch. D. 878.

*Costs on discontinuance.*—See *Harrison v. Leutner*, 16 Ch. D. 559. Where defendant paid a sum into Court as to part of plaintiff's claim, and the plaintiff, after issue joined, discontinued, it was held that he was entitled to his costs up to the time of payment into Court: *Suckling v. Gabb*, 36 W. R. 175. A plaintiff who discontinues must pay costs of an interlocutory application in which he succeeded, costs being made costs in the cause: *The St. Olaf*, 2 P. D. 113.



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**rr. 1—4.**

*Withdrawal of defence.*—One of several defendants to an action for recovery of land was allowed to withdraw his defence upon the terms of giving the plaintiffs all the relief to which they would be entitled at the trial, and paying the costs occasioned by the defence and the costs of a summons for leave to withdraw: *Real and Personal Advance Co. v. McCarthy*, 14 Ch. D. 188. For form of order for leave to withdraw a defence to a foreclosure action, see *Swindell v. Birmingham Syndicate*, W. N. (1884), 98. A defence put in fraudulently and without authority was allowed to be withdrawn: *Williams v. Preston*, 20 Ch. D. 672. As to the course to be followed where the defences of infant defendants are withdrawn by leave of the Court, see *Fitzwater v. Waterhouse*, 52 L. J., Ch. 83; *Gardner v. Tapling*, 33 W. R. 473. As to discontinuance against an infant defendant, see *Ruth v. Taylor*, 79 L. T. (newspaper) 211.

*Costs on withdrawal of defence.*—See *Real and Personal Advance Co. v. McCarthy*, 18 Ch. D. 362.

291.  
Withdrawal of record by consent.

[O. XXIII. r. 2.]

**2.** When a cause has been entered for trial, it may be withdrawn by either plaintiff or defendant, upon producing to the proper officer a consent in writing, signed by the parties.

*Country cases.*—By O. XXXVI., r. 25, *post*, p. 298, in country cases the party who entered the cause for trial must give immediate notice of the withdrawal to the District Registrar.

*Proper officer.*—See O. LXXI., r. 1, *post*, p. 514.

292.  
Costs on discontinuance.  
[Cf. O. XXIII. r. 2a.]

**3.** Any defendant may enter judgment for the costs of the action, if it is wholly discontinued against him, or for the costs occasioned by the matter withdrawn, if the action be not wholly discontinued, in case such respective costs are not paid within *four days* after taxation.

For a form of judgment under this rule, see App. F, No. 14, *post*, p. 588.

*Costs.*—See cases cited under rule 1.

293.  
Power to stay second action if costs unpaid.

**4.** If any subsequent action shall be brought before payment of the costs of a discontinued action, for the same, or substantially the same, cause of action, the Court or a Judge may, if they or he think fit, order a stay of such subsequent action, until such costs shall have been paid.

*Effect of Rule.*—This rule was introduced in 1883. “Neither this nor any other rule limits the inherent jurisdiction of the Court to restrain vexatious or unreasonable proceedings”: *Re Wickham*, 35 Ch. D. 272, per Cotton, L. J.

*Cases.*—In *Martin v. Earl Beauchamp*, 25 Ch. D. 12, a second action, substantially the same as the former one, was stayed until the costs of the first action were paid, though the plaintiff sued in different characters in the two suits. Where a married woman brought an action by a next friend, which was dismissed with costs, and subsequently brought another action by a different next friend, the second action was ordered to be stayed until the costs of the first action were paid: *Re Payne*, 23 Ch. D. 288. A second suit for probate was stayed until the costs of a prior action had been paid: *Peters v. Tilly*, 11 P. D. 145.

A County Court Judge has power to stay proceedings until the costs of a previous action in the Superior Court are paid: *Reg. v. Bayley*, 8 Q. B. D. 411. See also *Morgan & Wurtzburg*, pp. 536 *et seq.*

*Stay for non-payment of costs generally.*—The jurisdiction of the Court to stay proceedings in an action until compliance with an order for the payment of costs is founded, and ought to be exercised, on the principle and for the purpose of prevention of vexation and oppression, and does not depend on any old practice of the Court of Chancery under process of contempt, or on the mere fact of non-payment: *Re Wickham*, 35 W. R. 524; 35 Ch. D. 272; dissenting from *Re Neal*, 31 Ch. D. 437; *Re Youngs*, 31 Ch. 239.

*Staying proceedings generally.*—See S. C. Jud. Act, 1873, s. 24 (5), *ante*, p. 17; Dan. Pr., pp. 1932—1955; Chit. Arch., p. 360.



ORDER XXVII.

DEFAULT OF PLEADING.

Order XXVII.  
rr. 1, 2.

1. If the plaintiff, being bound to deliver a statement of claim, does not deliver the same within the time allowed for that purpose, the defendant may, at the expiration of that time, apply to the Court or a Judge to dismiss the action with costs, for want of prosecution; and on the hearing of such application the Court or Judge may, if no statement of claim shall have been delivered, order the action to be dismissed accordingly, or may make such other order on such terms as the Court or Judge shall think just.

*Time.*—As to the time allowed for delivering a statement of claim, see O. XX., rr. 1—3, and notes thereto, *ante*, pp. 214—216.

*Effect of Rule.*—As under these rules a plaintiff need not deliver a statement of claim unless required so to do by the defendant, the operation of this rule is less extensive than formerly.

*Application: how made.*—In the Chancery Division the application is usually made by summons: *Freason v. Lee*, 26 W. R. 138; but may be made by motion: *Evelyn v. Evelyn*, 13 Ch. D. 138. For form of application, see *Dan. Forms*, p. 248; and see *Dan. Pr.*, pp. 554—556. In the Queen's Bench Division the application is usually made by summons: see *Chitt. Arch.* p. 326; *Chitt. Forms*, p. 181.

*Where security for costs ordered.*—In such case an application to dismiss may be made, although the action has been stayed until security given, and by making the application the defendant does not abandon the order for security for costs: *La Grange v. M'Andrew*, 4 Q. B. D. 210.

*Plaintiff bankrupt.*—Notice of motion to dismiss was ordered to be served upon the trustee in bankruptcy: *Wright v. Swindon Ry. Co.*, 4 Ch. D. 164.

*Enlargement of time.*—Time will be given to plaintiff, as of course, if justice requires it, but usually upon terms that he pays the costs of the application: *Higginbottom v. Aynsley*, 3 Ch. D. 288. As to tender by plaintiff of costs upon being served with notice of motion to dismiss, see *Evelyn v. Evelyn*, 13 Ch. D. 138.

*Form of Order.*—See App. K, No. 15, *post*, p. 615; 2 Seton, p. 1540, No. 1. If time be given to the plaintiff, the order should direct dismissal "without further order:" 2 Seton, p. 1542.

*Effect of Order.*—Where an order is made dismissing an action, unless the plaintiff does some act within a specified time, and the plaintiff does not comply with the order, the action is at an end, and the time for doing the act in question cannot be extended: *Whistler v. Hancock*, 3 Q. B. D. 83; *Wallis v. Hepburn*, 3 Q. B. D. 84, n.; *King v. Davenport*, 4 Q. B. D. 402; but the order itself may be appealed against, and the time for appealing may be extended after the time limited by the order has expired: *Burke v. Rooney*, 4 C. P. D. 226; *Carter v. Stubbs*, 6 Q. B. D. 116. Until the order has been drawn up and served, it does not take effect; and therefore before it is drawn up and served the time limited by it may be extended: *Metcalfe v. Brit. Tea Assoc.*, 46 L. T. 31.

*Order not a final judgment.*—An order dismissing an action for want of prosecution and for payment of costs by the plaintiff is not a "final judgment" within the meaning of s. 4 of the Bankruptcy Act, 1883, and the defendant is not entitled to serve the plaintiff with a bankruptcy notice in respect of such order: *Ex parte Earl of Strathmore*, 20 Q. B. D. 512.

*Where several defendants.*—A defendant can only have the action dismissed as against himself, not as against other defendants: *Ward v. Ward*, 11 Beav. 159.

*No bar to second action.*—The dismissal of an action for non-prosecution is not a bar to subsequent proceedings in respect of the same matter: *Re Orrel Colliery and Firebrick Co.*, 12 Ch. D. 681. And this is the case even where the order is made by consent, unless it proceeds upon a compromise of the cause of action: *Magnus v. National Bank of Scotland*, 36 W. R. 602.

2. If the plaintiff's claim be only for a debt or liquidated demand, and the defendant does not, within the time allowed for that pur-

294.  
Default of  
pleading.  
Non-delivery  
of claim.  
[O. XXIX.  
r. 1.]

295.  
Non-delivery  
of defence:

**Order XXVII.**  
**rr. 2—5.**liquidated  
claim.[Cf. O. XXIX.  
r. 2.]

pose, deliver a defence, the plaintiff may, at the expiration of such time, enter final judgment for the amount claimed, with costs.

This is in accordance with the common law practice under the C. L. P. Act, 1852, s. 93.

*Entering judgment.*—For the mode of entering judgment on default of pleading in the Chancery Division, see 1 Seton, p. 13; Dan. Pr., pp. 560, 809; in the Queen's Bench Division, Chitt. Forms, p. 183.

*Form.*—For form of final judgment under rules 2 and 3, see Appendix F, No. 1, *post*, p. 585.

*Time for defence.*—By O. XXI., r. 7, *ante*, p. 218, where the defendant does not require a statement of claim, the time for delivering defence is *ten days* from appearance.

*Admiralty actions.*—Upon the identical words of the corresponding rule of 1875, it was held that the rule did not apply to an Admiralty action *in rem*, and that the procedure in such an action, upon default of pleading, was governed by the Admiralty Rules of 1859: *The Sfactoria*, 2 P. D. 3. The Rules of 1859 have now been expressly repealed: App. O, *post*, p. 660. It would, therefore, seem that upon default in such an action, either the present rule applies, or rule 11 of this Order. Having regard, however, to the above decision it might perhaps be contended that under O. LXXII., r. 2, the practice when the present rules came into operation will remain in force. See, as to this contention, *The Robert Dickinson*, 10 P. D. 15. Default of appearance in Admiralty actions *in rem* is specially provided for by O. XIII., r. 13, *ante*, p. 166.

*Replevin.*—The rule applies to an action on a replevin bond where the plaintiff claims the amount of the bond instead of damages: *Dix v. Groom*, 5 Ex. D. 91.

296.

Several de-  
fendants.[O. XXIX.  
r. 3.]

**3.** When in any such action as in the last preceding Rule mentioned there are several defendants, if one of them make default as mentioned in the last preceding Rule, the plaintiff may enter final judgment against the defendant so making default, and issue execution upon such judgment without prejudice to his right to proceed with his action against the other defendants.

Compare O. XIII., r. 4, *ante*, p. 163, as to default of appearance.

297.

Claim for  
goods or  
damages.[Cf. O. XXIX.  
r. 4.]

**4.** If the plaintiff's claim be for detention of goods and pecuniary damages, or either of them, and the defendant, or all the defendants, if more than one, make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants, and a writ of inquiry shall issue to assess the value of the goods, and the damages, or the damages only, as the case may be. But the Court or a Judge may order that, instead of a writ of inquiry, the value and amount of damages, or either of them, shall be ascertained in any way which the Court or Judge may direct.

*Forms.*—For forms of interlocutory judgment, and of judgment after assessment of damages, see App. F, Nos. 2 and 4, *post*, pp. 585, 586.

*Writ of inquiry.*—See O. XXXVI., rr. 56—58, *post*, pp. 306, 307.

*Admiralty action.*—In an action for damages under Lord Campbell's Act brought in the Admiralty Division, upon default in pleading by defendant, the plaintiff is entitled under this rule to enter interlocutory judgment, and have the damages assessed by a jury: *The Orwell*, 13 P. D. 80.

298.

Several de-  
fendants.[Cf. O. XXIX.  
r. 5.]

**5.** When in any such action as in Rule 4 mentioned there are several defendants, if one or more of them make default as mentioned in Rule 2, the plaintiff may enter an interlocutory judgment against the defendant or defendants so making default, and proceed with his action against the others. And in such case, the value and amount of damages against the defendant making default shall be assessed at the same time with the trial of the action or issues



therein against the other defendants, unless the Court or a Judge shall otherwise direct.

Order XXVII.  
rr. 5—11.

This is in accordance with the former practice in the Common Law Courts.

6. If the plaintiff's claim be for a debt or liquidated demand, and also for detention of goods and pecuniary damages, or pecuniary damages only, and any defendant make default as mentioned in Rule 2, the plaintiff may enter final judgment for the debt or liquidated demand, and also enter interlocutory judgment for the value of the goods and the damages, or the damages only, as the case may be, and proceed as mentioned in Rules 4 and 5.

299.  
Debt and damages.  
[O. XXIX.  
r. 6.]

For form of interlocutory judgment, see App. F, Nos. 2 and 4, *post*, pp. 585, 586.

7. In an action for the recovery of land, if the defendant makes default as mentioned in Rule 2, the plaintiff may enter a judgment that the person whose title is asserted in the writ of summons shall recover possession of the land, with his costs.

300.  
Action for recovery of land.  
[O. XXIX.  
r. 7.]

*Action for recovery of land.*—See O. XVIII., r. 2, *ante*, p. 199.

*Form of judgment.*—See App. F, No. 3, *post*, p. 585. The form given by these rules differs from that previously in use, inasmuch as a description of the lands recovered will now be inserted in the judgment.

8. Where the plaintiff has indorsed a claim for mesne profits, arrears of rent, or double value in respect of the premises claimed or any part of them, or damages for breach of contract or wrong or injury to the premises claimed upon a writ for the recovery of land, if the defendant makes default as mentioned in Rule 2, or if there be more than one defendant, some or one of the defendants make such default, the plaintiff may enter judgment against the defaulting defendant or defendants, and proceed as mentioned in Rules 4 and 5.

301.  
Action for recovery of land and damages.  
[Cf. O. XXIX.  
r. 8.]

The words "or wrong, &c.," were added to this rule by rule 7 of R. S. C., Dec. 1885.

9. If the plaintiff's claim be for a debt or liquidated demand, the detention of goods and pecuniary damages, or for any of such matters, or for the recovery of land, and the defendant delivers a defence, which purports to offer an answer to part only of the plaintiff's alleged cause of action, the plaintiff may, by leave of the Court or a Judge, enter judgment, final or interlocutory, as the case may be, for the part unanswered; provided that the unanswered part consists of a separate cause of action, or is severable from the rest, as in the case of part of a debt or liquidated demand: provided also that, where there is a counter-claim, execution on any such judgment as above-mentioned in respect of the plaintiff's claim shall not issue without leave of the Court or a Judge.

302.  
Defence as to part.

This rule was introduced in 1883. Compare O. XXXII., r. 6, *post*, p. 270, and note thereto, as to applying for judgment on admissions in the pleadings; and see *Hanmer v. Flight*, 36 L. T. 279.

10. In Probate actions, if any defendant make default in filing and delivering a defence, the action may proceed, notwithstanding such default.

303.  
Probate action.  
[O. XXIX.  
r. 9.]

11. In all other actions than those in the preceding Rules of this Order mentioned, if the defendant makes default in delivering a defence, the plaintiff may set down the action on motion for judgment, and such judgment shall be given as upon the statement of claim the Court or a Judge shall consider the plaintiff to be entitled to.

304.  
Other actions.  
[Cf. O. XXIX.  
r. 10.]



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**r. 11.**

**Forms.**—For forms of judgment in the Chancery Division, see 1 Seton, p. 38. See also Appendix F, No. 10, *post*, p. 587.

**Application of Rule.**—This rule applies in all actions other than actions for a debt, or damages, or the recovery of goods, or land, or Probate actions, or perhaps Admiralty actions *in rem*, as to which see note to rule 2.

**Motion for judgment.**—See O. XL., r. 1, *post*, p. 332.

**Defence put in out of time.**—Where a defence was put in after time it was held that the defence could not be treated as a nullity, and that the plaintiff was not entitled to judgment by default: *Gill v. Woodfin*, 25 Ch. D. 707; *Gibbings v. Strong*, 26 Ch. D. 66. See also *Montagu v. Land Corporation*, 56 L. T. 730. As to reply, see *Graves v. Terry*, 9 Q. B. D. 170.

**Counter-claim.**—Where defendant to a counter-claim makes default in pleading to it, the plaintiff in the counter-claim may move for judgment: *Street v. Crump*, 25 Ch. D. 68. A plaintiff by counter-claim can proceed against defendants by counter-claim, who do not appear, in the same way as a plaintiff in an original action: *Verney v. Thomas*, 58 L. T. 20. Where the plaintiff's action had been dismissed for failure to put in a reply and defence to a counter-claim, it was held that judgment in the counter-claim was properly obtained under this rule: *Higgins v. Scott*, 21 Q. B. D. 10.

**Notice of motion.**—Where no minutes of the proposed judgment have been left with the Judge's clerk, the notice of motion should contain the precise words of the judgment to be asked for: *De Jongh v. Newman*, 35 W. R. 403.

**Judgment as upon statement of claim.**—Where in an action for specific performance no declaration of lien was claimed, and the plaintiff on motion for judgment in default of pleading asked for judgment in the form given in 2 Seton, p. 1330, it was held that he was only entitled to such judgment as he claimed: *Tuson v. National Land Co.*, 56 L. T. 165. Where the statement of claim did not sufficiently state the contract or describe the property, but the plaintiff merely craved leave to refer to the agreement, the Court refused to make an order for specific performance in default of defence, but required the claim to be amended and re-served: *Smith v. Buchan*, 36 W. R. 631.

**Foreclosure.**—As to forms of judgment in foreclosure actions, on default in pleading by defendant, see *Platt v. Mendel*, 27 Ch. D. 246; *Hunter v. Myatt*, 28 Ch. D. 181; *Doble v. Manley*, 28 Ch. D. 664.

Where a mortgagee seeks on motion for judgment not only foreclosure, but also a personal order for payment against a mortgagee who has made default in delivering a defence, the statement of claim ought, however shortly, to contain a statement of the covenant upon which the order is claimed: *Law v. Philby*, 56 L. T. 230.

**Infant defendants.**—See *National Provincial Bank v. Evans*, 30 W. R. 177; *Re Fitzwater*, 52 L. J., Ch. 83; *Ripley v. Sawyer*, 31 Ch. D. 494; *Ellis v. Robbins*, 50 L. J., Ch. 512.

**Married woman.**—Where a married woman is defendant to an action on a contract, and makes default in delivery of defence, the statement of claim must contain an allegation that she has separate estate; otherwise the Court will refuse to make an order against her on the statement of claim under the rule: *Tetley v. Griffith*, 36 W. R. 46. It seems that on application for judgment against a married woman in default of appearance, it is not necessary to require an allegation to be inserted in the statement of claim that she was entitled to separate estate at the time the contract was entered into, inasmuch as execution will be limited in the manner directed by the Court of Appeal in *Scott v. Morley*, 20 Q. B. D. 120; *Direction of Practice Masters*, 30 June, 1888, *post*, p. 711.

**Evidence.**—In an action for specific performance where the defendant made default in delivering defence, it was held, on motion for judgment, that the agreement set out in the statement of claim must be verified by affidavit: *Holmes v. Shaw*, 52 L. T. 797. In *De Jongh v. Newman*, 35 W. R. 403, *Stirling, J.*, expressed a doubt as to whether it was in accordance with the rule to require an affidavit; and in *Bagley v. Searle*, 35 W. R. 404, he said he should not require such affidavit in future. See also *Jones v. Harris*, 55 L. T. 884. Where, in a partition action, some of the defendants were infants, no affidavit was required: *Ripley v. Sawyer*, 31 Ch. D. 494. In *Gray v. Roberts*, 32 Sol. J. 322, *Chitty, J.*, held, that on motion for judgment under this rule it is neither necessary nor right to file affidavits. See also *Smith v. Buchan*, 36 W. R. 631.

12. Where, in any such action as mentioned in the last preceding Rule, there are several defendants, then, if one of such defendants make such default as aforesaid, the plaintiff may either (if the cause of action is severable) set down the action at once on motion for judgment against the defendant so making default, or may set it down against him at the time when it is entered for trial or set down on motion for judgment against the other defendants.

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rr. 12—15.

305.

Several defendants.  
[Cf. O. XXIX.  
r. 11.]

The words "if the cause of action is severable" were not in the corresponding repealed rule.

*Severable cause of action.*—Where defendant brought in by counter-claim several persons not parties to the original action, and such persons did not appear, upon an application for judgment in default of appearance, it was held that the cause of action was not severable, and that an immediate judgment could not be granted against the defendants to the counter-claim who had not appeared: *Verney v. Thomas*, 58 L. T. 20.

13. If the plaintiff does not deliver a reply, or any party does not deliver any subsequent pleading, within the period allowed for that purpose, the pleadings shall be deemed to be closed at the expiration of that period, and all the material statements of fact in the pleading last delivered shall be deemed to have been denied and put in issue.

306.

Non-delivery  
of reply or  
subsequent  
pleading.

*Effect of Rule.*—This rule exactly reverses the practice under O. XXIX., r. 12 of the Rules of 1875, according to which the statements of fact in the last pleading were deemed to be admitted.

*Close of pleadings.*—The pleadings being closed by virtue of this rule, the plaintiff may give notice of trial under O. XXXVI., r. 11, *post*, p. 294. If he fails to do so within *six weeks*, the defendant may either give notice of trial himself, or apply to have the action dismissed for want of prosecution under r. 12 of that Order: *post*, p. 294.

*Counter-claim.*—Having regard to the terms of rr. 3, 17 of O. XIX., and r. 4 of O. XXIII., which put a reply to a counter-claim on the same footing as a defence, it is submitted that this rule only applies to a reply to a defence proper, or to pleadings subsequent to a reply, and that if a counter-claim is not pleaded to, the statements in it will be taken to be admitted in accordance with O. XIX., r. 13.

14. In any case in which issues arise in an action other than between plaintiff and defendant, if any party to any such issue makes default in delivering any pleading, the opposite party may apply to the Court or a Judge for such judgment, if any, as upon the pleadings he may appear to be entitled to. And the Court or Judge may order judgment to be entered accordingly, or may make such other order as may be necessary to do complete justice between the parties.

307.

Issue between  
others than  
plaintiff and  
defendant.  
[O. XXIX.  
r. 13.]

See S. C. Jud. Act, 1873, s. 24, sub-s. 3, *ante*, p. 16, O. XVI., r. 52, *ante*, p. 192, as to third parties brought in by third-party notice; and O. XIX., r. 3, *ante*, p. 203, and O. XXI., rr. 11—14, *ante*, pp. 219, 220, as to parties brought in by counter-claim.

15. Any judgment by default, whether under this Order or under any other of these Rules, may be set aside by the Court or a Judge, upon such terms as to costs or otherwise as such Court or Judge may think fit.

308.

Setting aside  
judgment by  
default.  
[O. XXIX.  
r. 14.]

Cf. O. XXXVI., r. 33, *post*, p. 299.

*Setting aside default judgment.*—Mere delay is not a reason for refusing to set aside a judgment by default. It must be shown that some irreparable injury would result to the plaintiff: see *Attwood v. Chichester*, 3 Q. B. D. 722. See also *Watt v. Barnett*, 3 Q. B. D. 363; *Williams v. Brisco*, 29 W. R. 713.



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r. 15.

*Refusal to comply with order for discovery.*—In *Haigh v. Haigh*, 31 Ch. D. 478, the defendant refused to comply with an order to produce certain documents. The defence was struck out and judgment given by default. The Court refused to set aside the judgment.

*Appeal from default judgment.*—Although the Court of Appeal has jurisdiction to hear a direct appeal from a judgment by default, such appeals will not be encouraged. The proper course for a party against whom judgment has been given by default is to apply to the Judge who heard the cause to set aside the judgment and rehear the cause: *Vint v. Hudspith*, 29 Ch. D. 322.

*Person not a party.*—As to the steps to be taken when a person not a party to the record seeks to set aside a judgment, see *Jacques v. Harrison*, 12 Q. B. D. 165. The design of the rule is to enable judgments by default to be set aside by those who have, or who can acquire, a *locus standi*, and does not give a *locus standi* to those who have none: *Ibid.*

*Non-appearance of plaintiff at trial.*—Where an action is in such case dismissed under O. XXXVI., r. 33, the Court has no power to set aside the order of dismissal unless the application is made within the time mentioned in that rule: *Walter v. James*, 34 W. R. 29; but see *Bradshaw v. Warlow*, 32 Ch. D. 403, cited under O. XXXVI., r. 33, *post*, p. 299.

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r. 1.

**ORDER XXVIII.**

**AMENDMENT.**

309.  
Amendment  
of indorsement  
and pleadings.  
[Cf. O. XXVII.  
rr. 1, 11, and  
O. III. r. 2.]

1. The Court or a Judge may, at any stage of the proceedings, allow either party to alter or amend his indorsement, or pleadings, in such manner and on such terms as may be just, and all such amendments shall be made as may be necessary for the purpose of determining the real questions in controversy between the parties.

*Effect of Rule.*—This rule generalises the provisions of the repealed O. III., r. 2, and O. XXVII., rr. 1, 11, in so far as they relate to amendments at the instance of the party pleading.

**AMENDMENT OF PLEADINGS GENERALLY.**—Amendments in pleadings are of two kinds: (a) *voluntary, i.e.*, such as are made at the instance of the party pleading; and (b) *compulsory, i.e.*, such as are made at the instance of another party: *Dan. Pr.*, p. 393. The provisions of the present Order relate solely to voluntary amendments.

*Voluntary amendments.*—Amendments of this class may be further subdivided, thus:—

A. Amendments which can be made without leave (as to which, see rr. 2—5, 13, *infra*).

B. Amendments by order of the Court (as to which, see rr. 1, 6, 7, 12, *infra*).

*Compulsory amendments.*—Amendments of this class may be made in the following cases:—

C. Where pleadings are ordered to be struck out as being unnecessary, embarrassing, or scandalous (O. XIX., r. 27, *ante*, p. 212); or as disclosing no reasonable cause of action or answer (O. XXV., r. 4, *ante*, p. 233).

D. Where pleadings are ordered to be set aside or amended on the ground of irregularity (O. LXX., rr. 1—3, *post*, pp. 512, 513).

*Amendment in other cases.*—Amendments may also be ordered in the case of misjoinder of causes of action (O. XVIII., r. 9, *ante*, p. 202); on partial discontinuance, or on withdrawal of part of a defence (O. XXVI., r. 1, *ante*, p. 234); on joinder of third parties (O. XVI., r. 53, *ante*, p. 192); on exclusion of counter-claim (O. XIX., r. 3, and O. XXI., r. 15, *ante*, pp. 203, 220); on default of discovery (O. XXXI., r. 21, *post*, p. 265).

*Time for amending.*—(a) In case of *voluntary* amendments, see rr. 2, 3, *infra*; (b) in case of *compulsory* amendments, see r. 7, *infra*. As to enlarging time, see O. LXIV., rr. 7, 8, *post*, pp. 469, 470.

*Printing.*—See r. 8, *infra*; O. LXVI., rr. 3, 7, *post*, p. 504.

*Delivery.*—See r. 10, *infra*.



*Costs of amendment.*—See r. 13, *infra*; O. LXV., r. 27 (31), (32), *post*, p. 496.

*Order to amend.*—Need not be drawn up: O. LII., r. 14, *post*, p. 390.

For tabulated summary of the material provisions of the Rules relating to amendment, see Dan. Forms, pp. 196, 197.

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r. 1.

**PRINCIPLES ON WHICH AMENDMENTS ALLOWED.**—As a general rule, leave to amend will be given unless the Court is satisfied that the party applying is acting *malâ fide*, or that his blunder has done some injury to the other party which cannot be compensated by payment of costs or otherwise: *Tildesley v. Harper*, 10 Ch. D. 393, at p. 396. “There is no kind of error or mistake which, if not fraudulent or intended to overreach, the Court ought not to correct, if it can be done without injustice to the opposite party. Courts do not exist for the sake of discipline, but for the sake of deciding matters in controversy, and I do not regard such amendment as a matter of favour or of grace”: *Cropper v. Smith*, 26 Ch. D. 700, at p. 710, per Bowen, L. J. “When by an amendment the real substantial question can be raised between the parties, ought we to refuse to allow the amendment, having regard to the rule, and to the direction in the Judicature Act, that as far as possible in any proceeding all questions between the parties shall be decided so as to prevent multiplicity of actions?” *Kurts v. Spence*, 36 Ch. D. 770, at p. 773, per Cotton, L. J. “Leave should not be given unless the Court sees its way to making full compensation to those against whom the relief is asked. Where that compensation can be given, then the leave will be given.” *Re Gaulard & Gibbs’ Patent*, 57 L. J., Ch. 209, per Kekewich, J. In *Clarapade v. Commercial Union Association*, 32 W. R. 262, particulars were allowed to be amended on terms, as no injury would be caused to the plaintiffs for which they could not be compensated by costs. Where the plaintiffs could not be placed in the same position as if the defendants had pleaded correctly in the first instance, leave to amend their defence was refused: *Steward v. North Metropolitan Tramways Co.*, 16 Q. B. D. 556. The Court may refuse to allow an amendment raising an entirely new case: *Newby v. Sharpe*, 8 Ch. D. 39; and see *Cargill v. Bower*, 10 Ch. D. 502; *Croce v. Barnicot*, 6 Ch. D. 753; *Collette v. Goode*, 7 Ch. D. 842; *Clarke v. Yorke*, 47 L. T. 381; *Clark v. Wray*, 31 Ch. D. 68; but see *Laird v. Briggs*, 19 Ch. D. 22. An amendment will not be allowed for the sole purpose of determining how the costs of the action should be awarded: *Webber v. Wedgwood*, W. N. (1883), 8. No amendment will be allowed which would injuriously alter the rights which the parties would have if there were no amendment: as, where the amendment would deprive the defendant of the defence of the Statute of Limitations: *Weldon v. Neal*, 19 Q. B. D. 394.

*When leave given.*—Leave to amend may be given at any time, even after the cause has been entered for trial: *Roe v. Davies*, 2 Ch. D. 729; or at the trial: *Budding v. Murdoch*, 1 Ch. D. 42; *King v. Corke*, *ibid.* 57. See, too, *Ashley v. Taylor*, 10 Ch. D. 768; *Green v. Sevin*, 13 Ch. D. 589, at p. 595; *Long v. Crossley*, 13 Ch. D. 388; *Nobel’s Explosives Co. v. Jones*, 17 Ch. D. 721; *Betts v. Doughty*, 5 P. D. 26. Leave ought to be granted, even at the last moment, where it is necessary to enable the Court to finally dispose of the questions between the parties, if the party is acting *bonâ fide*, and his opponent can be fully indemnified against any injury occasioned to him: *Re Trufort*, 34 W. R. 56. Amendment of pleadings was allowed, but only on terms, after joinder of issue and hearing of a point of law: *Preston Corporation v. Fulwood Local Board*, 34 W. R. 200. Where plaintiff in an action for specific performance had by his own act rendered performance impossible, but neither at the time he did so, nor at the hearing, asked for leave to amend, such leave was refused: *Hipgrave v. Case*, 28 Ch. D. 356.

*Discretion.*—The Court of Appeal will be slow to interfere with the exercise of discretion by the Judge below on the question of amendment: *Byrd v. Nunn*, 7 Ch. D. 284; *Golding v. Wharton Salt Works Co.*, 1 Q. B. D. 374; *Watson v. Rodwell*, 3 Ch. D. 380.

*Appeal.*—Where leave to amend is refused at the trial, and judgment is given against the party applying to amend, an appeal against the judgment includes an appeal against the order refusing leave to amend; no separate appeal from such order is necessary: *Laird v. Briggs*, 16 Ch. D. 663.

*Evidence in support of application.*—An affidavit showing the nature of a new

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rr. 1—6.**

defence sought to be added, or its materiality, is not required: *Cargill v. Bower*, 4 Ch. D. 78; *Chesterfield Co. v. Black*, 25 W. R. 409.

*Service of amended writ.*—An amended writ must in general be served in the same way as an original writ: *The Cassiopeia*, 4 P. D. 188.

**310.  
Amendment  
by plaintiff  
without leave.  
[Cf. O.  
XXVII. r. 2.]**

**2.** The plaintiff may, without any leave, amend his statement of claim, whether indorsed on the writ or not, once at any time before the expiration of the time limited for reply and before replying, or, where no defence is delivered, at any time before the expiration of *four weeks* from the appearance of the defendant who shall have last appeared.

*Time to reply.*—See O. XXIII., r. 1, *ante*, p. 229.

A plaintiff cannot name a place of trial in an amended statement of claim when there is no place of trial in the original statement of claim; nor can he in an amended statement of claim alter the place of trial named in the original claim: *Locke v. White*, 33 Ch. D. 308.

**311.  
Amendment  
by defendant  
without leave.  
[Cf. O.  
XXVII. r. 3.]**

**3.** A defendant who has set up any counter-claim or set-off may, without any leave, amend such counter-claim or set-off at any time before the expiration of the time allowed him for answering the reply, and before such answer, or in case there be no reply, then at any time before the expiration of *twenty-eight days* from defence.

*Time allowed to plead to a reply.*—See O. XXIII., r. 3, *ante*, p. 229.

**312.  
Disallowance  
of amendment.  
[O. XXVII.  
r. 4.]**

**4.** Where any party has amended his pleading under either of the last two preceding Rules, the opposite party may, within *eight days* after the delivery to him of the amended pleading, apply to the Court or a Judge to disallow the amendment, or any part thereof, and the Court or Judge may, if satisfied that the justice of the case requires it, disallow the same, or allow it subject to such terms as to costs or otherwise as may be just.

*Fresh cause of action set up by amendment.*—A defendant who considers that a plaintiff has entirely altered the nature of his action by an amendment should apply under this rule to have the amendment disallowed: *Bourne v. Coulter*, 53 L. J., Ch. 699.

**313.  
Pleading after  
amendment.  
[Cf. O.  
XXVII. r. 5.]**

**5.** Where any party has amended his pleading under Rules 2 or 3, the opposite party shall plead to the amended pleading, or amend his pleading, within the time he then has to plead, or within *eight days* from the delivery of the amendment, whichever shall last expire; and in case the opposite party has pleaded before the delivery of the amendment, and does not plead again or amend within the time above mentioned, he shall be deemed to rely on his original pleading in answer to such amendment.

*Effect of Rule.*—Part of this rule was introduced in 1883. Under the repealed rules, after one party had amended his pleading, the other party could only amend by leave. The present rule enables him to amend without leave, in this respect reverting substantially to the practice of the Common Law Courts, under s. 90 of the C. L. P. Act, 1852. See *Boddy v. Wall*, 7 Ch. D. 164; *Powell v. Jewsbury*, 9 Ch. D. 34.

**314.  
Application  
for leave to  
amend.  
[O. XXVII.  
r. 6.]**

**6.** In all cases not provided for by the preceding Rules of this Order, application for leave to amend may be made by either party to the Court or a Judge, or to the Judge at the trial of the action, and such amendment may be allowed upon such terms as to costs or otherwise as may be just.

See *Tildesley v. Harper*, 10 Ch. D. 393.



7. If a party who has obtained an order for leave to amend does not amend accordingly within the time limited for that purpose by the order, or if no time is thereby limited, then within *fourteen days* from the date of the order, such order to amend shall, on the expiration of such limited time as aforesaid, or of such fourteen days, as the case may be, become *ipso facto* void, unless the time is extended by the Court or a Judge.

This rule is taken from C. O. IX., rr. 17, 24, and C. O. XXXIII., r. 11.

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rr. 7—11.

315.

Failure to  
amend after  
order.

[O. XXVII.  
r. 7.]

8. An indorsement or pleading may be amended by written alterations in the copy which has been delivered, and by additions on paper to be interleaved therewith if necessary, unless the amendments require the insertion of more than 144 words in any one place, or are so numerous or of such a nature that the making them in writing would render the document difficult or inconvenient to read, in either of which cases the amendment must be made by delivering a print of the document as amended.

316.

Amendment  
by writing or  
reprint.

[Cf. O.  
XXVII. r. 8.]

*Printing, &c.*—As to when pleadings generally may be written and when they must be printed, see O. XIX., r. 9, *ante*, p. 208, and O. LXVI., r. 7, *post*, p. 504.

9. Whenever any indorsement or pleading is amended, the same, when amended, shall be marked with the date of the order, if any, under which the same is so amended, and of the day on which such amendment is made, in manner following, viz.: “Amended  
“ day of                      pursuant to order of                      dated  
“ the                      of                      ”

317.

Marking  
pleading as  
amended.

[Cf. O.  
XXVII. r. 9.]

10. Whenever any indorsement or pleading is amended, such amended document shall be delivered to the opposite party within the time allowed for amending the same.

318.

Delivery of  
amended  
pleading.

[Cf. O.  
XXVII. r. 10.]

11. Clerical mistakes in judgments or orders, or errors arising therein from any accidental slip or omission, may at any time be corrected by the Court or a Judge on motion or summons without an appeal.

319.

Clerical error  
in judgment  
or order.

[O. XLIIa.]

This rule is founded on C. O. XXIII., r. 21.

*Application under the rule.*—The records of the Court cannot be altered except upon a motion or summons under this rule: *Blake v. Harvey*, 29 Ch. D. 827.

*Cases.*—Where a judgment omitted to provide for the costs of an interlocutory proceeding, the omission was rectified: *Fritz v. Hobson*, 14 Ch. D. 542. See also *Blakey v. Hull*, 56 L. T. 400, where a direction to pay the costs of an *ex parte* motion was added to an order made on motion to commit for contempt. A judgment was allowed to be post-dated by consent: *Winkley v. Winkley*, 44 L. T. 572; see now O. XLI., r. 3. A petition was directed to be amended by striking out the names of some of the petitioners after an order had been made on it: *Re Savage*, 15 Ch. D. 557. The words “*per capita*” were ordered to be substituted for the words “*per stirpes*”: *Re Blackwell*, W. N. (1886). 97. Alterations in figures were allowed to be made in a judgment, as arising from an “accidental slip”: *Barker v. Purvis*, 56 L. T. 131. An order under the Settled Estates Act, 1877, was directed to be varied so as to dispense with consents of the tenants for life to the exercise of leasing powers: *Re Riley's Trusts*, 30 W. R. 78. Where an error was discovered in a foreclosure judgment arising out of an accidental error in the Chief Clerk's certificate, the Court refused to amend the judgment, but a fresh order was made: *Eckersley v. Eckersley*, W. N. (1884). 133; and see *Re Pilling's Trusts*, 26 Ch. D. 432. For further cases, see Dan. Pr., pp. 820—823; Morgan, p. 380.



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*Varying minutes.*—See Dan. Pr., pp. 805, 806; Mem. W. N. (1876), 296; *Hood v. Cooper*, 26 Beav. 373. A copy of the Registrar's note should be produced: *Robinson v. Local Board of Barton*, 21 Ch. D. 621. The Court has jurisdiction to amend an order, after it has been passed and entered, where the judgment does not correctly represent what was actually decided by the Court. But the proper course is to move to vary the minutes after they have been settled, and before they have been passed and entered; and if this course is not followed, the judgment will be afterwards amended only under special circumstances, and on the terms of the applicant paying all the costs: *Re Swire*, 30 Ch. D. 239.

*Order of Court of Appeal.*—As to varying the minutes of an order made by C. A., see *General Share Co. v. Wetley*, 20 Ch. D. 130.

*Liberty to apply.*—Is implied in every order, not being final: *Fritz v. Hobson*, 14 Ch. D. 542, at p. 561; *Penrice v. Williams*, 23 Ch. D. 353.

*Consent orders.*—See, as to form of such orders, *Michel v. Mutch*, 55 L. J., Ch. 485. As to the right to withdraw consent before an order has been passed and entered, see *Harvey v. Croydon Sanitary Authority*, 26 Ch. D. 249. A party who has deliberately consented to a perpetual injunction cannot be permitted to withdraw his consent merely because he subsequently discovers that he might have a good defence to the action: *Elsas v. Williams*, 54 L. J., Ch. 336.

320.  
General power  
of amendment.  
[O. LIX. r. 2.]

12. The Court or a Judge may at any time, and on such terms as to costs or otherwise as the Court or Judge may think just, amend any defect or error in any proceedings, and all necessary amendments shall be made for the purpose of determining the real question or issue raised by or depending on the proceedings.

This rule reproduces the repealed O. LIX., r. 2, which was taken from s. 222 of the C. L. P. Act, 1852.

*Non-compliance and irregularity.*—See O. LXX., *post*, p. 512.

321.  
Costs of  
amending  
claim or  
counter-claim.

13. The costs of and occasioned by any amendment made pursuant to Rules 2 and 3 of this Order shall be borne by the party making the same, unless the Court or a Judge shall otherwise order.

See O. LXV., r. 27 (31), *post*, p. 496, as to such costs.

Where the defendant moved, more than eight days after an amended statement of claim had been delivered, to have his costs, on the ground that it set up a wholly new claim, it was held that he ought to have applied within the eight days, under rule 4, *supra*: *Bourne v. Coulter*, 53 L. J., Ch. 699.

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r. 1.

ORDER XXIX.

RELEASES IN ADMIRALTY ACTIONS.

322.  
Release.

1. Property arrested by warrant shall only be released under the authority of an instrument issued from the Registry, to be called a release.

*Effect of Order.*—The rules of this Order apply exclusively to Admiralty proceedings *in rem*, and reproduce with necessary alterations rules of practice contained in the Admiralty Rules of 1859 and 1871, which are now repealed: App. O, *post*, p. 660.

The subjects dealt with by the Order are three, viz.:—

1. Proceedings for the release of property arrested: Rules 1—7;
2. Proceedings for preventing the release of property arrested: Rules 8—10; and
3. Proceedings for preventing the arrest of property: Rules 11 *et seq.*

*Arrest of property.*—See O. V., r. 16, *ante*, p. 141; as to bail, see O. XII., rr. 18—21, *ante*, p. 160.

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rr. 1—7.

*Release on bail.*—As to the practice in Admiralty actions with respect to releases on bail and on payment into Court in lieu of bail, see Roscoe's Admiralty Practice, ed. 2, pp. 152—159.

As to the right of a mortgagee to have a vessel released which has been arrested in an action by one part-owner against another, see *The Eastern Belle*, 33 L. T. 214.

*Forms.*—For forms of præcipe for release and release, see App. A, Part II., Nos. 15, 16, *post*, pp. 533, 534.

2. A solicitor, at whose instance any property has been arrested, may, before an appearance has been entered, obtain the release thereof by filing a notice that he withdraws the warrant.

323.  
Notice with-  
drawing  
warrant.

3. A solicitor may obtain the release of any property by paying into the registry the sum in respect of which the action has been commenced.

324.  
Release by  
payment.

*Payment into Court.*—See O. XXII., rr. 19—21, *ante*, pp. 228, 229; and see also *post*, p. 732.

*Bail.*—Bail can be required in respect of a counter-claim. As a general rule bail is required to the amount of the claim; but if the bail is exorbitant the Court will order the plaintiffs to pay the costs of the bail: *The George Gordon*, 9 P. D. 46; *The Agamemnon*, 5 Asp. 92. In a collision case, where the defendant's ship had not been arrested or security required, it was held that the defendants could not compel the plaintiffs to give security to answer the counter-claim: *The Alne Holme*, 4 Asp. 591. See also *The Alexander*, 5 Asp. 89.

4. Cargo, arrested for freight only, may be released by filing an affidavit as to the value of the freight, and by paying the amount of the freight into the registry, or by satisfying the Judge that it has already been paid.

325.  
Cargo arrested  
for freight  
only.

See, as to the manner in which freight should be computed for the purposes of this rule, *The Leo*, Lush. 444; *The Norway*, Browning & Lush. 377.

5. In an action of salvage, the value of the property under arrest shall be agreed, or an affidavit of value filed, before the property is released, unless the Court or a Judge shall otherwise order.

326.  
Salvage ac-  
tions.

*Value.*—Generally, the value as shown is conclusive: *The Betsy*, 5 C. Rob. 295; *The Hanna*, 37 L. T. 364. But if the amount is given wrongly by a *bonâ fide* mistake, it will be altered on application to the Court even after a decree has been made: *The James Armstrong*, L. R., 4 A. & E. 380.

6. A solicitor, who shall have filed a bail bond in the sum in respect of which the action has been commenced, or paid such sum into the registry, and, if the action be one of salvage, shall have also filed an affidavit as to the value of the property arrested, shall be entitled to a release for the same, unless there be a caveat against the release thereof outstanding in the "Caveat Release Book."

327.  
Where bail  
given.  
  
Caveat Release  
Book.

7. The release, when obtained, shall be left with a notice in the registry by the solicitor taking out the same, who shall also at the same time pay all costs, charges and expenses attending the care and custody of the property whilst under arrest; and the property shall thereupon be released.

328.  
Property how  
released.



**Order XXIX.  
rr. 8—14.**

329.  
Caveat against  
release.

8. A solicitor in an action, desiring to prevent the release of any property under arrest, shall file in the Registry a notice, and thereupon a caveat against the release of the property shall be entered in a book to be kept in the Principal Registry, called the "Caveat Release Book."

*Caveat.*—A caveat remains in force for not more than six months: O. LXIV., r. 15, *post*, p. 471. For form of præcipe for caveat, see *post*, p. 534.

330.  
Telegraphing  
in District  
Registry.

9. Where an action is proceeding in a District Registry, the District Registrar shall, before authorizing a release, ascertain by telegraph, or otherwise, from the Principal Registry, whether or not any caveat has been entered there.

As to disregarding an arrest by telegraph, see *The Seraglio*, 54 L. J., P. 76.

331.  
Penalty for  
delaying re-  
lease.

10. A party delaying the release of any property by the entry of a caveat, shall be liable to be condemned in costs and damages, unless he shall show to the satisfaction of the Court or a Judge good and sufficient reason for having so done.

*Delaying release.*—As to what constitutes a good and sufficient reason for delaying the release, see *The Corner*, Br. & L. 21; *The Don Ricardo*, 49 L. J., Ad. 28, decided under the corresponding Ad. Ct. R., 1859, r. 54.

332.  
Caveat against  
arrest.

11. A party, desiring to prevent the arrest of any property, may cause a caveat against the issue of a warrant for the arrest thereof to be entered in the Principal Registry.

For form of præcipe, see *post*, p. 534.

333.  
Undertaking  
to enter ap-  
pearance and  
give bail.

12. For the purpose of the last preceding Rule mentioned, the party shall cause to be filed in the Registry a notice, signed by himself or his solicitor, undertaking to enter an appearance in any action that may be commenced against the said property, and to give bail in such action in a sum not exceeding an amount to be stated in the notice, or pay such sum into the Registry; and a caveat against the issue of a warrant for the arrest of the property shall thereupon be entered in a book to be kept in the Registry, called the "Caveat Warrant Book."

*Undertaking.*—As to the undertaking to enter appearance and give bail, see O. XII., r. 18, *ante*, p. 160. As to the re-arrest of a vessel where the bail is insufficient, see *The Freedom*, L. R., 3 A. & E. 495. A caveat remains in force for not more than six months: O. LXIV., r. 15, *post*, p. 471.

Caveat  
Warrant Book.

334.  
Telegraphing  
in District  
Registry.

13. Where an action is proceeding in a District Registry, the District Registrar (unless required to act under Rule 18 of this Order) shall, before issuing a warrant for the arrest of the property, ascertain by telegraph, or otherwise, from the Principal Registry, whether or not any caveat has been entered against the issue of a warrant for the arrest thereof.

See note to rule 9.

335.  
Service of  
writ.

14. A solicitor, commencing an action against any property in respect of which a caveat has been entered in the "Caveat Warrant



Book," shall forthwith serve a copy of the writ upon the party on whose behalf the caveat has been entered, or upon his solicitor. **Order XXIX. rr. 14—18.**

15. Within *three days* from the service of the writ or copy thereof, the party on whose behalf the caveat has been entered shall, if the sum in respect of which the action commenced does not exceed the amount for which he has undertaken, give bail in such sum, or pay the same into the Registry. **336. Bail to be given.**

16. After the expiration of *twelve days* from the filing of the notice, in Rule 12 mentioned, if the party on whose behalf the caveat has been entered shall not have given bail in such sum, or paid the same into the Registry, the plaintiff's solicitor may proceed with the action by default, and on filing his proofs in the Registry may have the action placed on the list for hearing. **337. Proceedings where bail not given.**

*Default actions.*—As to proceedings and evidence in default actions, see O. XIII., r. 13, *ante*, p. 166; O. XXXVII., r. 2, *post*, p. 308; O. LVI., *post*, p. 427.

17. If, when the action comes before the Judge, he is satisfied that the claim is well founded, he may pronounce for the amount which appears to him to be due, and may enforce the payment thereof by attachment against the party on whose behalf the caveat has been entered, and by the arrest of the property, if it then be or thereafter come within the jurisdiction of the Court. **338. Trial of action by default.**

18. Nothing in this Order shall prevent a solicitor from taking out a warrant for the arrest of any property, notwithstanding the entry of a caveat in the "Caveat Warrant Book;" but the party at whose instance any property, in respect of which a caveat is entered, shall be arrested, shall be liable to have the warrant discharged and to be condemned in costs and damages, unless he shall show, to the satisfaction of the Judge, good and sufficient reason for having so done. **339. Where property arrested notwithstanding caveat.**

The above rules, 11 to 18, apply to counter-claims as well as to original actions.

## ORDER XXX.

**Order XXX.  
r. 1.**

### SUMMONS FOR DIRECTIONS.

1. In every cause or matter one general summons for directions may be taken out at any time by any party with respect to the following matters and proceedings: particulars of claim, defence or reply, statement of special case, discovery (including interrogatories), commissions and examinations of witnesses, mode of trial, (including proceedings in lieu of demurrer, trial on motion for judgment, and reference), place of trial, and any other matter or proceeding in the cause or matter previous to trial. **340. General summons for directions.**

*Effect of Rule.*—This procedure was introduced in 1883, and was intended

**Order XXX.**  
**rr. 1, 2.**

to supersede the previous practice, according to which every application at Chambers had to be made by a separate summons.

The summons may be taken out by any party, and at any time, whether the pleadings are closed or not, and whether there have been pleadings or not.

*Particulars.*—When there are pleadings particulars will be included in the pleadings: see O. XIX., r. 6. One of the cases contemplated by this rule is where there are no pleadings other than writ and defence (see O. XX., r. 1; O. XXII., r. 7; O. XXVII., r. 13), or where issues of fact are stated without pleadings (O. XXXIV., rr. 9—12).

*Special Case.*—See O. XXXIV., rr. 1—8, *post*, pp. 274—277.

*Discovery.*—Under the present rules interrogatories may be delivered without leave in actions where relief is sought on the ground of fraud or breach of trust (O. XXXI., r. 1). In every other case of discovery an order is now required. This order should, when practicable, be asked for on the summons for directions, and the application should as far as possible embrace all the discovery which the applicant requires, as well as the directions consequent thereon. It is to be noted that any application relating to discovery, as, for instance, as to time and place of inspection, may be made by either party on the general summons.

*Mode of trial.*—As regards mode of trial it is apparently the intention of this Order that it should be determined on this summons, whether the whole or any part of the action is to be tried by any of the several modes of trial specified in O. XXXVI., rr. 2—7, or whether any question of law is to be decided before the issues of fact (O. XXV., r. 2), or any of the issues of fact tried before the others (O. XXXVI., r. 8).

*Place of trial.*—Where there are pleadings the proposed place of trial will be specified in the statement of claim, or where there is no statement of claim by a notice to be served by the plaintiff within six days after appearance. The application, therefore, under this rule will only be made where it is desired to change the place of trial.

*Practice.*—The summons in the Q. B. Division is heard by a Master or District Registrar, and the appeal is by indorsement on the summons, or notice to attend before a Judge at Chambers without any new summons: see O. XXXV., r. 10, *post*, p. 281; O. LIV., r. 21, *post*, p. 398.

341.  
Nature and  
contents of  
summons.

Hearing.

Directions.

2. Such summons for directions shall be a summons returnable in not less than four days, in the Form No. 3 in Appendix K, with such variations as circumstances may require, and shall be addressed to and served upon all such parties to the cause or matter as may be affected thereby. The applicant shall, so far as practicable, include in the summons all or as many of the above-mentioned matters and proceedings as, having regard to the nature of the cause or matter, can conveniently be dealt with by the order and directions of the Court or Judge. Upon the hearing of the summons, any party to whom the summons is addressed shall be at liberty to apply for any order or directions as to any of the above-mentioned matters or proceedings which he may desire, and thereupon, after giving notice to such parties (if any) as the Court or Judge may direct, any order may be made, and all necessary directions given, as to all or any of such matters and proceedings as may be just, whether applied for or not: such order shall be in the Form No. 4 in Appendix K, with such variations as circumstances may require.

For the forms referred to, see *post*, p. 612. A fee of 10s. is payable: see *post*, p. 668.

*Effect of Rule.*—This rule regulates the procedure on the summons. The



summons being issued, any party acquires the right to make any application as to any matter upon which he may desire an order or directions.

Order XXX.  
rr. 2, 3.

*Practice.*—The practice is that by the order for directions liberty to either party is given to apply on notice for further directions, thus saving the trouble and expense of fresh summonses. See also O. LIV., r. 8, *post*, p. 395, as to adjourning the consideration of the whole or any part of an application by summons.

3. If, upon any other application as to any of the above-mentioned matters or proceedings, it shall appear to the Court or Judge that the application is one that could and ought to have been included in or made upon the general summons for directions, such application shall be granted only at the costs of the party making the same.

342.  
Costs of other application.

*Effect of Rule.*—This rule applies to applications made before as well as after the issue of the summons; so that any application made outside the summons for directions, which could have been included in it, will be made at the risk of the applicant as to costs.

## ORDER XXXI.

### DISCOVERY AND INSPECTION.

Order XXXI.  
r. 1.

1. In any action where relief by way of damages or otherwise is sought on the ground of fraud or breach of trust, the plaintiff may at any time after delivering his statement of claim, and a defendant may, at or after the time of delivering his defence, without any order for that purpose, and in every other cause or matter the plaintiff or defendant may by leave of the Court or a Judge deliver interrogatories in writing for the examination of the opposite parties, or any one or more of such parties, and such interrogatories when delivered shall have a note at the foot thereof, stating which of such interrogatories each of such persons is required to answer: Provided that no party shall deliver more than one set of interrogatories to the same party without an order for that purpose: Provided also that interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness.

343.  
Discovery by interrogatories.  
[Cf. O. XXXI. r. 1.]

Further interrogatories.  
Where irrelevant.

*Effect of Order.*—This Order deals with two different kinds of discovery; namely, discovery by interrogatories and discovery of documents. In both cases the previous practice is very materially altered.

*Effect of Jud. Acts on rules as to discovery.*—Relief by way of discovery was formerly within the exclusive jurisdiction of Courts of Equity. As to the nature of that jurisdiction and the conditions of its exercise, see Story, Eq. Jur., § 474, and Wigram on Discovery. By the Common Law Procedure Act, 1854, a limited right of granting discovery was conferred on Courts of Law. Under the Judicature Acts, subject to the procedure prescribed by the Rules, a litigant has the right to all the discovery which he could have obtained either in a Court of Law or in a Court of Equity: *Bustros v. White*, 1 Q. B. D. 423; *Anderson v. Bank of British Columbia*, 2 Ch. D. 644, at p. 658; *A.-G. v. Gaskill*, 20 Ch. D. 519; *Lyell v. Kennedy*, 8 App. Cas. 217, at p. 233; but where a party could not have obtained discovery either at law or in equity, he cannot obtain it now:



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*Lyell v. Kennedy*, 8 App. Cas. 217, at p. 223; *Hunnings v. Williamson*, 10 Q. B. D. 459; *Martin v. Treacher*, 16 Q. B. D. 507.

It was the intention of the Acts and Rules to introduce a practice intermediate between the old practice in Chancery and the old practice at Common Law: *Parker v. Wells*, 18 Ch. D. 477, at p. 485; *Bolekov v. Fisher*, 10 Q. B. D. 161, at p. 168. Where there is any conflict between the rules of common law and equity, the rules of equity are to prevail: S. C. Jud. Act, 1873, s. 25, sub-s. 11; *Bustros v. White*, 1 Q. B. D. 423; *Anderson v. Bank of British Columbia*, 2 Ch. D. 644, at p. 654; *Kearsley v. Phillips*, 10 Q. B. D. 465. See Bray on Discovery, pp. 6, 7.

**INTERROGATORIES.**

*Effect of present Rules.*—The present rules relating to interrogatories differ in the following respects from the previous rules:—

1. Except where relief is sought in an action on the ground of fraud or breach of trust, a party must now obtain leave before he can deliver interrogatories. Having regard to the machinery provided by rules 6 and 7 for objecting to, setting aside, and striking out interrogatories, it would seem to have been the intention of the rules that the leave should be a general leave without reference to the particular interrogatories proposed to be delivered, subject only to the considerations specified in rule 2; but the practice on this point is not uniform in the different Divisions.
2. The application for leave must, at the risk of costs, be made on the summons for directions (O. XXX., rr. 1, 3, *ante*, pp. 249, 251).
3. The deposit prescribed by rule 26 of this Order must be made before delivery of the interrogatories.
4. Interrogatories by leave may be delivered not only in an "action," but in any "cause or matter:" see these terms defined by s. 100 of S. C. Jud. Act, 1873, *ante*, p. 63.

Discovery by interrogatories must be distinguished from discovery of documents, for in many respects different considerations apply to the two kinds of discovery: see per Cotton, L. J., in *Southcark Water Co. v. Quick*, 3 Q. B. D. 315, at p. 321.

"*Plaintiff*" and "*defendant*."—See as to the definitions of these terms, S. C. Jud. Act, 1873, s. 100. A petitioner in a petition to procure the revocation of a patent was allowed to deliver interrogatories: *Re Haddan's Patent*, 33 W. R. 96.

*Opposite party.*—See *Molloy v. Kilby*, 15 Ch. D. 162, where it was held that the defendant to a counter-claim, who was not a party to the original action, cannot interrogate the original plaintiff. A guardian *ad litem* cannot be compelled to answer: *Ingram v. Little*, 11 Q. B. D. 251.

*Third party.*—Third parties who have obtained leave to oppose the plaintiff can be interrogated: *Eden v. Weardale Iron Co.*, 34 Ch. D. 223; and can interrogate: *Eden v. Weardale Iron Co.* (No. 2), 35 Ch. D. 287.

*Election petition.*—Under the present rules, as under the rules of 1875, there is presumably no power to allow interrogatories in election petitions: see *Wells v. Wren*, 5 C. P. D. 546.

*Admiralty actions.*—As to interrogatories in an Admiralty action, see *The Biola*, 24 W. R. 524; *The Radnorshire*, 5 P. D. 172.

*Suits for nullity of marriage.*—See *Euston v. Smith*, 9 P. D. 57; *Harvey v. Lovekin*, 10 P. D. 122. *Semble*, in a divorce suit an application for leave to deliver interrogatories ought to be made to the Judge and not to the registrar: *Harvey v. Lovekin*.

*Actions for penalties.*—The general rule is that in an action for penalties by a common informer leave will not be given to the plaintiff to interrogate: *Hunnings v. Williamson*, 10 Q. B. D. 459; *Martin v. Treacher*, 16 Q. B. D. 507. An action for damages for breach of copyright under 3 & 4 Will. IV. c. 15, s. 2, is not an action for penalties, and therefore discovery by way of interrogatories is allowable: *Adams v. Batley*, 18 Q. B. D. 625.

*Interrogatories by official liquidator.*—See *Re Alexandra Palace Co.*, 16 Ch. D. 58; *Heiron's Case*, 15 Ch. D. 139.

*Patent action.*—Notwithstanding the provisions of 15 & 16 Vict. c. 83, s. 41, as to particulars, it was held that the Court had jurisdiction in a proper case to allow interrogatories to be delivered: *Birch v. Mather*, 22 Ch. D. 629.

Order XXXI.  
rr. 1—4.

*Time for delivery.*—Under the repealed rules it was the practice in actions in the nature of common law actions not to allow the plaintiff to deliver interrogatories before defence (unless under very special circumstances), on the ground that they were not relevant at that stage of the action: *Mercier v. Cotton*, 1 Q. B. D. 442; *Gay v. Labouchere*, 4 Q. B. D. 206, at p. 207; but in purely Chancery actions this restriction was not imposed: *Harbord v. Monk*, 9 Ch. D. 616. A defendant was not ordinarily allowed to interrogate before defence delivered: *Disney v. Langbourne*, 2 Ch. D. 704. After the close of the pleadings there was held to be no absolute right to interrogate. The Court or Judge exercised a discretion and would not allow the application to be made the occasion of unfair delay: *Ellis v. Ambler*, 25 W. R. 557; *London and Provincial Insurance Co. v. Davies*, 5 Ch. D. 775.

*Interrogatories deemed irrelevant.*—The provision as to interrogatories which merely cross-examined appears to be in affirmation of the decisions in *Allhusen v. Labouchere*, 3 Q. B. D. 654; *A.-G. v. Gaskill*, 20 Ch. D. 519. As to interrogatory being relevant as leading up to a matter in issue, see *Jones v. Richards*, 15 Q. B. D. 439, where, in order to prove that the defendant was the writer of a libellous letter, the plaintiff was allowed to interrogate as to whether or not he was the writer of another letter addressed to a third person.

*Leave to deliver.*—See Dan. Forms, p. 790; Chitt. Forms, pp. 286, 287. Upon an application for leave to interrogate, it is not necessary to serve the other side with a copy of the proposed interrogatories: *Hall v. Liardet*, W. N. (1883), 165. The Judge will not decide as to the relevancy of particular interrogatories: *Hall v. Liardet* (No. 2), W. N. (1883), 175. There should be a statement, not necessarily in writing, of the applicant's reasons for interrogating, and of the general scope of the interrogatories: *Martin v. Spicer*, 32 Ch. D. 592; but it is not the duty of the Judge or chief clerk to settle the form of the interrogatories: *Martin v. Spicer* (*ubi sup.*); *Swabey v. Dorey*, 32 Ch. D. 352.

*Form of order.*—See App. K, No. 16, *post*, p. 615.

*Particulars.*—Where the information sought could be obtained by particulars, leave to interrogate was refused: *O'Meara v. Stone*, W. N. (1884), 72.

*Striking out.*—As to striking out the interrogatories or objecting to answer them, see rr. 6, 7, *infra*.

2. In deciding upon any application for leave to exhibit interrogatories, the Court or Judge shall take into account any offer which may be made by the party sought to be interrogated, to deliver particulars, or to make admissions, or to produce documents relating to the matter in question, or any of them.

344.  
Leave to interrogate.

This rule was introduced in 1883: see note to rule 1.

3. In adjusting the costs of the cause or matter inquiry shall at the instance of any party be made into the propriety of exhibiting such interrogatories, and if it is the opinion of the taxing officer or of the Court or Judge, either with or without an application for inquiry, that such interrogatories have been exhibited unreasonably, vexatiously, or at improper length, the costs occasioned by the said interrogatories and the answers thereto shall be paid in any event by the party in fault.

345.  
Costs occasioned by interrogatories.  
[Cf. O. XXXI. r. 2.]

The taxing officer is to inquire into the matters referred to in this rule, whether specially ordered or not, and whether applied to for the purpose or not: O. LXV., r. 27 (20), *post*, p. 492. See, too, rule 25, *infra*.

4. Interrogatories shall be in the Form No. 6 in Appendix B, with such variations as circumstances may require.

For such form, see *post*, p. 545.

346.  
Form of interrogatories.  
[Cf. O. XXXI. r. 4.]



Order XXXI.  
rr. 5, 6.

347.

Corporations  
and other  
bodies.  
[Cf. O. XXXI.  
r. 4.]

5. If any party to a cause or matter be a body corporate or a joint stock company, whether incorporated or not, or any other body of persons, empowered by law to sue or be sued, whether in its own name or in the name of any officer or other person, any opposite party may apply for an order allowing him to deliver interrogatories to any member or officer of such corporation, company, or body, and an order may be made accordingly.

*Effect of Rule.*—This rule (which reproduces the repealed rule of 1875, with the substitution of “cause or matter” for “action”) is borrowed from s. 51 of the C. L. P. Act, 1854. In Chancery it was formerly necessary to make the officer a party in order to obtain discovery upon oath, or to file a cross bill: see Dan. Pr., pp. 132, 1402, ed. 5. But this rule provides a new and simpler procedure; and if an officer now be made a party for purposes of discovery only, the Court, under the powers given by O. XVI., will order his name to be struck out: *Wilson v. Church*, 9 Ch. D. 552.

*Foreign state.*—Where a foreign government is plaintiff, the Court will stay proceedings in the action until the government names a proper person to make discovery: *Republic of Costa Rica v. Erlanger*, 1 Ch. D. 171.

*Ordinary member.*—An ordinary member of a company should not be interrogated unless it can be shown that he has the required information, and that there is no officer of the company capable of giving it: *Berkeley v. Standard Discount Co.*, 13 Ch. D. 97, at p. 99, per Jessel, M. R. Where an ordinary member is examined he cannot refuse to file his affidavit in answer until he has been paid his personal costs; nor will the Court make any order as to the payment of his costs separately from those of the company: *Ibid.* A company will not be ordered to answer by a member against whom a reasonable objection can be shown: *Manchester Paving Co. v. Slagg*, W. N. (1882), 127.

*Officer.*—Where a corporation puts forward its town clerk, who is also its solicitor in the action, to answer interrogatories, he cannot object to answer on the ground of privilege as a solicitor: *Mayor of Swansea v. Quirk*, 5 C. P. D. 106. As to the duty of officers of a corporation to obtain information for the purpose of answering interrogatories, see per Cotton, L. J., in *Southwark Water Co. v. Quick*, 3 Q. B. D. 315, at p. 321; and as to inquiries from agents generally, *Bolckow v. Fisher*, 10 Q. B. D. 161; and *Rasbotham v. Shropshire Union Co.*, 24 Ch. D. 110.

*Company in liquidation.*—Where a company in liquidation is a party to the action, discovery may be obtained from the official liquidator: *Re Contract Corporation*, 7 Ch. 207; *Re Barned's Banking Co.*, 2 Ch. 350.

348.  
Objections to  
particular in-  
terrogatories.  
[Cf. O. XXXI.  
r. 5a.]

6. Any objection to answering any one or more of several interrogatories on the ground that it or they is or are scandalous or irrelevant, or not *bond fide* for the purpose of the cause or matter, or that the matters inquired into are not sufficiently material at that stage, or on any other ground, may be taken in the affidavit in answer.

This rule is taken without alteration from the first part of rule 5a of the repealed Rules.

*Objecting to answer.*—When inadmissible questions are asked, the party interrogated may either answer the question or state in his affidavit that he refuses to answer. In the latter case he should specify his ground of objection. The rule, after specifying certain grounds of exception, provides that the party interrogated may object on these “or on any other ground.” It is for the Judge to determine the validity of the objection, if the party interrogating does not acquiesce in it.

*Scandal.*—“Scandal consists in the allegation of anything which it is unbecoming the dignity of the Court to hear, or is contrary to good manners, or which charges some person with a crime not necessary to be shown in the cause; to which may be added that any unnecessary allegation, bearing cruelly upon the moral character of an individual, is also scandalous”: Dan. Pr., p. 386. Nothing relevant is scandalous: *Fisher v. Owen*, 8 Ch. D. 645.



*Criminating questions.*—A party interrogated may object to answer questions tending to criminate: see *Fisher v. Owen*, 8 Ch. D. 645; *Allhusen v. Labouchere*, 3 Q. B. D. 654; *Lamb v. Munster*, 10 Q. B. D. 110 (libel); or which would expose him to penalties: *Hunnings v. Williamson*, 10 Q. B. D. 459; *Martin v. Treacher*, 16 Q. B. D. 507; or to proceedings for maintenance: *Bradlaugh v. Newdegate*, 11 Q. B. D. 1, at p. 7. But he cannot object to answer an interrogatory as to slanderous words used by him: *Atkinson v. Fosbrooke*, L. R., 1 Q. B. 628. An interrogatory must be answered, although the answer may expose other persons to actions: *Tetley v. Easton*, 25 L. J., C. P. 293.

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r. 6.

*Libels in newspapers.*—In the case of a newspaper, where under 6 & 7 Will. 4, c. 76, s. 19, and 32 & 33 Vict. c. 24, a bill of discovery would have lain in aid of an action of libel, it has been held that the same discovery may now be had in an action: *Ramsden v. Breamley*, W. N. (1875), 199; *Carter v. Leeds Daily News*, W. N. (1876), 11; and now by the Newspaper Libel and Registration Act, 1881 (44 & 45 Vict. c. 60), ss. 8, 9, 15, provision is made for the compulsory registration of the names of newspaper proprietors.

*Irrelevancy.*—By the proviso to rule 1, "interrogatories which do not relate to any matters in question in the cause or matter shall be deemed irrelevant, notwithstanding that they might be admissible on the oral cross-examination of a witness." This appears to be merely in affirmance of previous decisions, under which it was held that interrogatories need not be answered which merely cross-examined as to credit: *Allhusen v. Labouchere*, 3 Q. B. D. 654; see, too, *Bolckow v. Young*, 42 L. T. 690; or which ask whether the allegations in the pleadings of the opposite party were true: *Johns v. James*, 13 Ch. D. 370; or which ask details of the evidence as opposed to the facts on which the opposite party relied: *Eade v. Jacobs*, 3 Ex. D. 335; as explained in *A.-G. v. Gaskill*, 20 Ch. D. 519, and in *Bidder v. Bridges*, 29 Ch. D. 29. See further as to the relevancy of particular interrogatories, *Eade v. Jacobs*, *ubi supra*, action by executor for breach of covenant, questions as to verbal waiver by deceased; *Ashley v. Taylor*, 38 L. T. 44, action for false representations; *Saunders v. Jones*, 7 Ch. D. 435, action for wrongful dismissal, question as to the acts of misconduct relied on by defendant; see the comments on that case in *Benbow v. Low*, 16 Ch. D. 93; and *Lyon v. Tweedell*, 13 Ch. D. 375; *Rowcliffe v. Leigh*, 6 Ch. D. 256; *Shepard v. Lord Lonsdale*, 5 C. P. D. 47, sale of horses, interrogatories as to how the horses came into the plaintiff's possession; *Benbow v. Low*, *ubi supra*; *Johns v. James*, 13 Ch. D. 370, as to accounts in actions claiming an account; *Mansfield v. Childerhouse*, 4 Ch. D. 82, questions as to irrelevant breach of trust. In *Parker v. Wells*, 18 Ch. D. 477, the defendant was allowed to object to questions the answers to which could not help plaintiff to obtain a judgment, though they might be useful if he obtained it.

*Interrogatories as to damages.*—Interrogatories as to the amount of damages claimed are only admissible, as a rule, where the defendant does not directly traverse the plaintiff's claim, but has either paid money into Court, or can show that such claim is *prima facie* extortionate: *Clarke v. Bennett*, 32 W. R. 550.

*Not material at that stage.*—See *Parker v. Wells*, 18 Ch. D. 477; *Wood v. Anglo-Italian Bank*, 34 L. T. 255; *Whyte v. Ahrens*, 26 Ch. D. 717.

*Disclosure of names of probable witnesses.*—In an action for libel, plaintiff was required to answer as to the names of persons in whose possession he alleged certain documents to be, upon which he relied to defeat a plea of justification: *Marriott v. Chamberlain*, 17 Q. B. D. 154.

"Fishing" interrogatories.—See *Hennessy v. Wright*, 36 W. R. 879.

*Privilege.*—It does not follow that because a document is privileged, the information derived from it is also privileged: see per Cotton, L. J., in *Southcark Water Co. v. Quick*, 3 Q. B. D. 315, at p. 321. See further, *Mayor of Swansea v. Quirk*, 5 C. P. D. 106. Where a claim of privilege, good in law, is set up in answer to interrogatories, the Court will not go behind the answer unless it is shown from the subject-matter and the answer that the claim cannot be sustained: *Lyell v. Kennedy* (No. 2), 27 Ch. D. 1.

The privilege of discovery resulting from professional confidence does not extend to facts communicated by the solicitor to the client which cannot be the subject of a confidential communication between them, even though such facts have a relation to the case of the client in the action: *Foakes v. Webb*, 28 Ch. D. 287.

*Ejectment.*—A defendant in ejectment cannot object to answer interrogatories

**Order XXXI.** which tend to support the plaintiff's case: *Lyell v. Kennedy* (No. 1), 8 App. Cas. 217; but he can object to answer interrogatories which relate only to the evidence in support of his own title: *Horton v. Bott*, 26 L. J., Exe. 267.

*Documents.*—Where a party is alleged to have made an insufficient affidavit of documents he may be interrogated: *Jones v. Monte Video Gas Co.*, 5 Q. B. D. 556, see at pp. 558, 559. But where an affidavit of documents has been made which is on the face of it sufficient, a general roving interrogatory as to documents will not be allowed; whether or not the Court will allow a party to interrogate as to some specific document is a matter for the discretion of the Judge: *Hall v. Truman*, 29 Ch. D. 207; and see *Nicholl v. Wheeler*, 17 Q. B. D. 101; *Edison Electric Light Co. v. Holland Co.*, W. N. (1888), 31. As to questions as to contents of lost documents, see *Dalrymple v. Leslie*, 8 Q. B. D. 5.

349.  
Setting aside  
or striking out.  
[Cf. O. XXXI.  
r. 5a.]

**7.** Any interrogatories may be set aside on the ground that they have been exhibited unreasonably or vexatiously, or struck out on the ground that they are prolix, oppressive, unnecessary, or scandalous; and any application for this purpose may be made within seven days after service of the interrogatories.

*Effect of Rule.*—This rule is taken from the second branch of rule 5a of O. XXXI. of the repealed rules with two modifications; first, seven days has been substituted for four as the time within which to apply; secondly, prolixity is added as a ground for setting aside. This is in addition to the other rules against prolixity. By rule 3 of this Order, and by rule 27 (20) of O. LXV., prolixity is visited by costs, and by rule 26 of this Order the amount of the deposit is made to vary with the length of the interrogatories.

The above rule only applies to cases where interrogatories should not have been exhibited at all. The objection that any particular interrogatory is improperly administered or is irrelevant must be taken in the affidavit in answer: *McIlroy v. Duncan*, W. N. (1884), 48.

*Unreasonable.*—As to setting aside a set of interrogatories under the former practice, on the ground that they were unreasonable at the stage of the action at which they were exhibited, see *Mercier v. Cotton*, 1 Q. B. D. 442; *Gay v. Labouchere*, 4 Q. B. D. 206, at p. 207, per Pollock, B.; *Re Sutcliffe*, 44 L. T. 547; and see note to rule 1. Interrogatories which are as a whole vexatious or unreasonable may be struck out, and leave given to exhibit a fresh set: *Cawley v. Burton*, 32 W. R. 33.

*Scandalous.*—An interrogatory, tending to criminate, which is not relevant, may probably be struck out as scandalous: see *Allhusen v. Labouchere*, 3 Q. B. D. 654. But see also *Harvey v. Lovekin*, 10 P. D. 122, where the C. A. held that the objection that interrogatories tended to criminate must be taken in answer thereto. In *Smith v. Berg*, 25 W. R. 606, an interrogatory asking whether the defendants, who were sued as husband and wife, were married was struck out as scandalous.

*Prolix.*—Where interrogatories are unreasonably prolix, they should be struck out under this rule: *Grumbrecht v. Parry*, 32 W. R. 558.

*Practice.*—For form of summons, see Dan. Forms, p. 793; Chitt. Forms, p. 292.

350.  
Answer by  
affidavit.  
[O. XXXI.  
r. 6.]

**8.** Interrogatories shall be answered by affidavit to be filed within ten days, or within such other time as a Judge may allow.

*Costs of answer.*—Where in an action against a company a member of the company is interrogated, he cannot refuse to file his answer until his taxed costs have been paid: *Berkeley v. Standard Discount Co.*, 13 Ch. D. 97.

*Time.*—The time runs from the date of service of a copy of the receipt for deposit under r. 26, *infra*.

*Enlarging time.*—See O. LXIV., r. 8 (by consent); *Ibid.*, r. 7 (enlargement or abridgment by order), *post*, pp. 469, 470.

*Costs of application for time.*—See O. LXV., r. 27 (24), *post*, p. 494.



*Answering according to knowledge, information, remembrance, and belief.*—See Dan. Pr., p. 1819; Bray on Discovery, pp. 127 *et seq.* An answer may be verbally full, but really and technically insufficient, as where a defendant sets up his ignorance of facts as to which he has plainly the means of obtaining the information required: *A.-G. v. Rees*, 12 Beav. 50. An answer as to matters to which the defendant was not alleged to be privy, that they might be true for anything he knew to the contrary, followed by the statement that he was a stranger to, and could not form any belief respecting them, was held sufficient: *Amhurst v. King*, 2 S. & S. 183. Belief founded on privileged communications is as much protected as knowledge or information derived from the same source: *Lyell v. Kennedy* (No. 3), 9 App. Cas. 81.

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rr. 8—11.

*Information of agents.*—See *Anderson v. Bank of British Columbia*, 2 Ch. D. 644; *Hall v. L. & N. W. Ry. Co.*, 35 L. T. 848. Where a party is interrogated as to matters done or omitted to be done by his agents and servants in the course of their employment, he does not sufficiently answer by saying that he does not know, and that he has no information on the subject. He is bound to go further, and obtain information from such agents or servants of his, or he must show sufficient reason for not doing it: *Bolekov v. Fisher*, 10 Q. B. D. 161, at p. 171, per Lindley, L. J. But see *Rasbotham v. Shropshire Union Ry. Co.*, 24 Ch. D. 110.

9. An affidavit in answer to interrogatories shall, unless otherwise ordered by a Judge, if exceeding ten folios, be printed, and shall be in the Form No. 7 in Appendix B, with such variations as circumstances may require.

351.  
Form of answer.  
[O. XXXI.  
r. 7.]

*Printing.*—The printing will be done by the parties: O. LXVI., r. 7, *post*, p. 504, where provisions will be found as to printing, delivery of copies, and costs. A folio is 72 words: O. LXV., r. 27 (14), *post*, p. 491.

As to the Judge's discretion to dispense with printing, see *Webb v. Bornford*, 46 L. J., Ch. 288.

For the Form referred to, see *post*, p. 545. As to schedules to an answer, see Dan. Pr., pp. 1822, 1823; Bray, p. 125.

10. No exceptions shall be taken to any affidavit in answer, but the sufficiency or otherwise of any such affidavit objected to as insufficient shall be determined by the Court or a Judge on motion or summons.

352.  
Sufficiency of answer: how determined.  
[O. XXXI.  
r. 9.]

11. If any person interrogated omits to answer, or answers insufficiently, the party interrogating may apply to the Court or a Judge for an order requiring him to answer, or to answer further, as the case may be. And an order may be made requiring him to answer or answer further, either by affidavit or by *vivâ voce* examination, as the Judge may direct.

353.  
Order for answer or further answer.  
[Cf. O. XXXI.  
r. 10.]

*Practice.*—Applications under this rule should be by summons at Chambers, not by motion: *Chesterfield Collieries Co. v. Black*, 24 W. R. 783; 13 Ch. D. 138, n.; and the summons should specify the interrogatories or parts of interrogatories to which a further answer is required: *Anstey v. North Woolwich Sub-way Co.*, 11 Ch. D. 439; see, too, *Church v. Perry*, 36 L. T. 513; *Ashley v. Taylor*, 38 L. T. 44. For forms of summons, see Dan. Forms, p. 795; Chitt. Forms, p. 295. The duty of the Court with reference to answers to interrogatories is now regulated by rules 10 and 11 of this Order, and limited to considering the sufficiency or insufficiency of the answer, *i.e.*, whether the party interrogated has answered that which he has no excuse for not answering—and only in the case of insufficiency can it require a further answer: *Lyell v. Kennedy* (No. 2), 27 Ch. D. 1. Where the whole answer was an evasion it was ordered to be struck out, and a full and sufficient answer delivered: *Furber v. King*, 29 W. R. 536.

*Vivâ Voce examination.*—Under an order for further answer to interrogatories *vivâ voce*, only such answer is required as would have been sufficient if originally given in writing: *Litchfield v. Jones*, 51 L. T. 572.

*Irrelevant matter in answer.*—As to answers containing statements irrelevant to the questions asked, and improper, see *Peyton v. Harting*, L. R., 9 C. P. 9. As to whether an embarrassing answer can be dealt with as insufficient, see *Lyell v.*



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rr. 11, 12.

354.

Discovery of  
documents.

[Cf. O. XXXI.  
r. 12.]

*Kennedy* (No. 2), 27 Ch. D. 1, per Bowen, L. J. An answer extremely prolix was treated as irrelevant and embarrassing: *Lyell v. Kennedy* (No. 4), 33 W. R. 44. As to the modes of enforcing answers to interrogatories, see rule 21, *infra*.

12. Any party may, without filing any affidavit, apply to the Court or a Judge for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power, relating to any matter in question therein. On the hearing of such application the Court or Judge may either refuse or adjourn the same, if satisfied that such discovery is not necessary or not necessary at that stage of the cause or matter, or make such order, either generally or limited to certain classes of documents, as may, in their or his discretion, be thought fit.

*Cause or matter*.—See definition of these terms in s. 100 of S. C. Jud. Act, 1873, *ante*, p. 63.

#### DISCOVERY OF DOCUMENTS.

*Effect of Rules*.—The earlier rules of this Order having dealt with the first branch of discovery, that by interrogatories, rules 12 to 20 proceed to deal with discovery as it affects documents.

The subject obviously embraces two parts: first, discovery simply, that is to say, the power of compelling an opponent to disclose what documents he has in his possession; secondly, the power of compelling their production.

The subject of discovery simply is dealt with in rules 12 and 13; that of production or inspection of documents, as of right, without the intervention of a Judge, in rules 15 to 17; that of production and inspection by order of a Judge, in rules 14, 18—20.

Rules 25 and 26 relate to the costs of discovery, and provide that a deposit shall be made before discovery is ordered.

*Effect of Rule 12*.—This rule was not intended to alter the old rule of the Court of Chancery, but only to give the Court a discretion as to ordering discovery of documents. In order to exercise this discretion, the Judge must look at the pleadings, but he ought not to allow either party to make affidavits. If affidavits have already been filed for another purpose the Judge may look at them, but the party desiring to use those affidavits ought not to give a general notice to read them, but to call the attention of his opponent to the particular passages on which he intends to rely, as showing that the discovery for which he asks would probably benefit him: *Downing v. Falmouth United Sewage Board*, 37 Ch. D. 234.

*Variance in practice*.—The practice as to orders for discovery is not the same in the Queen's Bench and Chancery Divisions. In the Queen's Bench Division the order simply directs the affidavit to be made, and the party is left to obtain inspection or production under rules 14 and 15. In the Chancery Division the order usually, besides requiring the affidavit to be made, requires the party making it to produce all the documents that he does not object to produce: see Dan. Pr., p. 1833.

*In what proceedings*.—An order for discovery of documents may be made against the suppliant in a petition of right: *Tomline v. The Queen*, 4 Ex. D. 252; against a third party, who has appeared and obtained leave to defend: *MacAllister v. Bishop of Rochester*, 5 C. P. D. 194; against the owners of a foreign ship in an Admiralty action, giving them a reasonable time to file their affidavit: *The Emma*, 24 W. R. 587; in proceedings under the Companies Act, 1862, to strike off a contributory: *Re National Funds Ass. Co.*, 24 W. R. 774; against the officer of a company designated for that purpose: *Cooke v. Oceanic Steam Co.*, W. N. (1875), 220; against a co-defendant: *Hamilton v. Nott*, 16 Eq. 112; but there must be an issue between the co-defendants: *Shaw v. Smith*, 18 Q. B. D. 193, explaining *Brown v. Watkins*, 16 Q. B. D. 125. An order for discovery cannot, however, be made against the defendant's solicitor: *Cashin v. Craddock*, 2 Ch. D. 140. An order may be made in interpleader, see O. LVII., r. 13; against a sheriff's officer in an action against the sheriff: r. 28, *infra*; and in an appeal against an inclosure award: *Riccard v. Inclosure Commissioners*, 24 L. J., Q. B. 49. An order cannot be made against a next friend: *Dyke v. Stephens*, 30 Ch. D. 189 (dissenting from *Higginson v. Hall*, 10 Ch. D. 235); *Re Corsellis*, 31 W. R. 414. After an order referring the action and all matters in difference to an arbitrator, an application in the action for discovery was

refused, on the ground that the Court had not before it any matter in question in the action: *Penrice v. Williams*, 22 Ch. D. 353. In the absence of special circumstances, an official liquidator will not be ordered to make an affidavit of documents in proceedings in a winding-up: *Re Mutual Society*, 22 Ch. D. 714. In an action for penalties by a common informer, defendant will not be called upon to make an affidavit of documents: *Whiteley v. Barley*, 56 L. J., Q. B. 312.

*Insurance cases.*—In *Fraser v. Burrows*, 2 Q. B. D. 624, the Court refused an order to stay an action on a policy until discovery should be made by a person not a party, not within the jurisdiction, and not under the plaintiff's control, although the plaintiff made title through him. But the plaintiff in an insurance case must show that he has done his best to procure the ship's papers: *West of England Bank v. Canton Co.*, 2 Ex. D. 472. The old rules as to discovery of ship's papers still apply: see *China Steamship Co. v. Commercial Ins. Co.*, 8 Q. B. D. 142; and see Form, App. K, No. 19, *post*, p. 616.

*Time.*—In the Chancery Division a plaintiff is not in general entitled to an order for discovery of documents until a statement of claim has been delivered; but after such delivery he is, as a general rule, entitled to the discovery: *Cashin v. Craddock*, 2 Ch. D. 140; *Davies v. Williams*, 13 Ch. D. 550; *Union Bank v. Manby*, 13 Ch. D. 239; *Philipps v. Philipps*, 40 L. T. 815; *Mellor v. Thompson*, 49 L. T. 222; and see *Republic of Costa Rica v. Strousberg*, 11 Ch. D. 323, at p. 326. A defendant is not generally entitled to discovery until after delivery of defence: *Egremont Burial Board v. Egremont Iron Co.*, 14 Ch. D. 158. At Common Law it was not formerly the practice to make an order for discovery by either party before delivery of the defence: *Hancock v. Guerin*, 4 Ex. D. 3; and, generally speaking, the same practice still prevails in the Q. B. D.: *British and Foreign Contract Co. v. Wright*, 32 W. R. 413. The Court has full discretion in the matter: *Edelston v. Russell*, 57 L. T. 927. In an action to restrain the sale of goods as being an infringement of the plaintiff's trade-mark, and claiming damages for false representations, or in the alternative an account of profits, an order having been made that the questions of fact should be tried by a jury, it was held that the plaintiff was not entitled, before he had established his title to relief by verdict of the jury, to discovery as to the sales effected by the defendant, and production of his books for that purpose: *Fennessy v. Clark*, 37 Ch. D. 184. See Dan. Pr., p. 1833; Bray, pp. 158—164.

*Disclosure.*—It has been held that "every document relates to the matters in question which not only would be evidence upon any issue, but also, which it is reasonable to suppose, contains information which must either directly or indirectly enable the party requiring the affidavit either to advance his own case, or to damage the case of his adversary." *Compagnie Financière v. Peruvian Guano Co.*, 11 Q. B. D. 55, at p. 63; see *English v. Tottie*, 1 Q. B. D. 141; *Hutchinson v. Glover*, 1 Q. B. D. 138. For instance, the documents of title of a defendant in ejectment are material: *The New British Investment Co. v. Peed*, 3 C. P. D. 196; see, too, *Philipps v. Philipps*, 40 L. T. 815. A document which relates exclusively to the case of the party making discovery is not material: see Wigram on Discovery, pp. 15, 261; *Minet v. Morgan*, 8 Ch. 361.

*Objection to production.*—If the party making discovery objects to produce any document which he has referred to in his affidavit, it is for the Judge to determine the validity of the objection under rules 18 and 20, *infra*. It is a not uncommon practice at Judges' Chambers, by consent, to show the documents in question to the Judge and take his decision thereupon. Where this is done no appeal lies from his order: *Bustros v. White*, 1 Q. B. D. 423. But whether such a course is right, *quære*; see *Re Holloway*, 12 P. D. 167, at p. 169, per Cotton, L.J.

*Interrogatory as to documents.*—An objection to an interrogatory as to documents, that an order for discovery of documents has not been obtained, is a good answer: *Jacobs v. G. W. Ry. Co.*, W. N. (1884), 33. See also *Robinson v. Budgett*, W. N. (1884), 94.

As to the production and inspection of documents disclosed, see rule 14, *infra*, and note thereto.

*Practice.*—See as to discovery and production of documents generally, Dan. Pr., pp. 1830—1851; Dan. Forms, pp. 797—812; 1 Seton, pp. 133—168; Bray on Discovery, pp. 151—238; Chitt. Arch., pp. 491—514; Chitt. Forms, pp. 269—284. For form of summons, see Dan. Forms, p. 799.

For form of order, see App. K, *post*, p. 615.



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rr. 13, 14.

355.

Affidavit of  
discovery.

[O. XXXI.  
r. 13.]

13. The affidavit, to be made by a party against whom such order as is mentioned in the last preceding Rule has been made, shall specify which, if any, of the documents therein mentioned he objects to produce, and it shall be in the Form No. 8 in Appendix B, with such variations as circumstances may require.

*Form.*—See App. B, No. 8, *post*, p. 545. The form given in the rules was intended to be the common form, and to be exhaustive: *Anon.*, W. N. (1876), 39.

**AFFIDAVIT IS CONCLUSIVE.**—The affidavit under this rule is not open to cross-examination: *Manby v. Bewicke*, 8 De G., M. & G. 470; it is conclusive, unless it appears from the affidavit itself or the documents referred to therein, or from admissions in the pleadings, that the affidavit does not give complete discovery: *Welsh Steam Collieries Co. v. Gaskell*, 36 L. T. 352; *Jones v. Monte Video Gas Co.*, 5 Q. B. D. 556; *Bewicke v. Graham*, 7 Q. B. D. 400; *Saull v. Broune*, 17 Eq. 402; *Compagnie Financière v. Peruvian Guano Co.*, 11 Q. B. D. 55; *Bulman v. Young*, 31 W. R. 766. See *A.-G. v. Emerson*, 10 Q. B. D. 191; *Roberts v. Oppenheim*, 26 Ch. D. 724. As to interrogating as to documents where a party is dissatisfied with the affidavit, see *Jones v. Monte Video Gas Co.*, *ubi supra*. But see also *Hall v. Truman*, 29 Ch. D. 307; *Nicholl v. Wheeler*, 17 Q. B. D. 101.

*Objection to production to be stated.*—Where a party objects to produce documents which he has disclosed he must in his affidavit specify the grounds on which he claims exemption, and identify the documents for which he asserts this privilege: *Gardner v. Irvin*, 4 Ex. D. 49; see, too, *Webb v. East*, 5 Ex. D. 108; *Roberts v. Oppenheim*, 26 Ch. D. 724.

*Description of documents.*—In *Taylor v. Batten*, 4 Q. B. D. 85, privileged documents described in the affidavit as “certain documents and letters which have passed between my legal advisers and myself, which are numbered 50 to 76 inclusive, and are tied up in a bundle marked with the letter A, and initialled by me,” were held to be sufficiently identified. See further *Bewicke v. Graham*, 7 Q. B. D. 400; *Taylor v. Oliver*, 45 L. J., Ch. 774; *Mayor of Bristol v. Cox*, 26 Ch. D. 678. An affidavit not sufficiently distinguishing which items or parts of items in the schedule referred to the matters in question in the action, was ordered to be taken off the file as being an abuse of the process of the Court: *Bolton v. Natal Land Co.*, W. N. (1887), 143.

*Prolixity.*—An oppressive affidavit may be ordered off the file: *Walker v. Poole*, 21 Ch. D. 835; see, also, *Hill v. Hart-Davis*, 26 Ch. D. 470.

*Insufficient affidavit.*—“An affidavit of documents may be insufficient in four ways (1) as being discredited or inconsistent; (2) as not following out the proper form; (3) as not sufficiently identifying the documents; (4) as not sufficiently stating the grounds of objection to production or otherwise insufficiently claiming protection.” *Bray*, p. 210. For forms of summonses to consider the sufficiency of the affidavit, and for further affidavit as to particular documents, see *Dan. Forms*, p. 803. For forms of order, see 1 *Seton*, p. 137.

*Document found after affidavit filed.*—It is the duty of a party in such case to inform his opponent of this discovery, either by supplementary affidavit or by notice: *Mitchell v. Darley Main Colliery Co.*, 1 C. & E. 215.

356.

Production by  
order.

[O. XXXI.  
r. 11.]

14. It shall be lawful for the Court or a Judge at any time during the pendency of any cause or matter, to order the production by any party thereto, upon oath, of such of the documents in his possession or power, relating to any matter in question in such cause or matter, as the Court or Judge shall think right; and the Court may deal with such documents, when produced, in such manner as shall appear just.

This rule reproduces O. XXXI., r. 11 of the repealed rules.

*Inspection.*—The party obtaining discovery is *prima facie* entitled to inspect all documents which the other party is bound to disclose, as to which see note to rule 12, *supra*; for production is a matter of right, not a matter in the discretion of the Judge: *Bustros v. White*, 1 Q. B. D. 423; *Anderson v. Bank of British Columbia*, 2 Ch. D. 644; but there are certain grounds on which the party making discovery may claim exemption from producing the documents.

*Documents of title.*—The defendant in an action for the recovery of land may object to produce documents which relate solely to his own title: *Horton v. Bott*,



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26 L. J., Ex. 267; *The New British Investment Co. v. Peed*, 3 C. P. D. 196; *Lyell v. Kennedy* (No. 1), 8 App. Cas. 217, at pp. 223, 224; but he cannot object to produce documents of title which support or tend to support the title of the plaintiff: *Lyell v. Kennedy*, *ubi supra*. In other actions documents of title, if relevant, are not privileged, but their relevancy must clearly appear: *Minet v. Morgan*, 8 Ch. 361; *Corporation of Hastings v. Icalt*, *Ibid.*, 1017; and see those cases as to the form of the claim for protection. See further as to production of title deeds, *Egremont Burial Board v. Egremont Iron Ore Co.*, 14 Ch. D. 158. Material documents of title will be ordered to be produced, although the deponent swears they relate only to his own case and not to the other party's, if from the description of the documents and the affidavit disclosing them it is clear that the deponent has misconceived their nature: *A.-G. v. Emerson*, 10 Q. B. D. 191. But the inaccuracy of the affidavit as to one document does not of itself destroy the privilege as to the rest of the scheduled documents: *Leslie v. Cave*, 35 W. R. 515 (not following *Ponsonby v. Hartley*, W. N. (1883), 44). A plea of purchaser for value without notice is insufficient ground for privilege from production in an action for recovery of land by a legal title: *Emmerson v. Ind*, 33 Ch. D. 323 (affirmed (H. L.), 12 App. Cas. 300).

*Criminating documents.*—Documents tending to criminate the party discovering them may possibly be privileged from production, but the objection must be taken specifically and on oath: *Webb v. East*, 5 Ex. D. 23 and 108.

**PROFESSIONAL PRIVILEGE.**—As to the grounds on which privilege can be claimed, see *Rawstone v. Preston Corporation*, 30 Ch. D. 116, per Kay, J. Communications between solicitor and client are privileged from production: see, for instance, *Taylor v. Batten*, 4 Q. B. D. 85; provided the communication was confidential: *Bursill v. Tanner*, 16 Q. B. D. 1, at p. 5; and the privilege extends to communications made by third parties to, or for the purpose of submission to, the solicitor, provided the communications are made with reference to actual or impending litigation: see the principle explained, per Jessel, M. R., in *Anderson v. British Bank of Columbia*, 2 Ch. D. 644, at p. 649; *Wheeler v. Le Marchant*, 17 Ch. D. 675, at pp. 681, 682; and by Brett, L. J., in *Southwark Water Co. v. Quick*, 3 Q. B. D. 315, at p. 320. See, too, *Kyshe v. Holt*, W. N. (1888), 128. A solicitor is bound to state the names of the persons on whose behalf the privilege is claimed: *Bursill v. Tanner*, *ubi sup.*

*Instances of documents held to be privileged.*—The following are privileged, namely:—Reports of medical men procured by solicitor for purposes of an action: *Friend v. L. C. & D. Ry.*, 2 Ex. D. 437; reports and documents relating to impending litigation prepared for purpose of submission to solicitor, whether actually submitted or not: *Southwark Water Co. v. Quick*, 3 Q. B. D. 315; *McCorquodale v. Bell*, 1 C. P. D. 471; copies of documents obtained from the Board of Trade: *The Palermo*, 9 P. D. 6; survey of a ship made for purpose of action: *The Theodor Korner*, 3 P. D. 162; but see *Martin v. Butchard*, 36 L. T. 732; opinions of counsel with reference to the litigation, whether taken before or after the commencement of the action, and minutes of committees appointed to report concerning matters connected with the litigation: *Mayor of Bristol v. Cox*, 26 Ch. D. 678; shorthand notes of proceedings in a previous action relating to the same subject-matter: *Norden v. Defries*, 8 Q. B. D. 508; but see *Rawstone v. Mayor of Preston*, 30 Ch. D. 116; *Re Worswick*, 38 Ch. D. 370; documents collected by the professional knowledge, skill, and research of the solicitor: *Lyell v. Kennedy* (No. 2), 27 Ch. D. 1; anonymous letters sent to counsel and solicitors for a party, and containing information relating to the matters in question in the action: *Re Holloway*, 12 P. D. 167.

*Privilege not lost.*—A document once privileged is always privileged, as for instance in future litigation: *Bullock v. Corrie*, 3 Q. B. D. 356, followed in *Pearce v. Foster*, 15 Q. B. D. 114; compare *Branford v. Branford*, 4 P. D. 72.

*Instances of documents held not to be privileged.*—The following are not privileged, namely:—Letters from non-legal agent giving opinion on subject of litigation: *Bustros v. White*, 1 Q. B. D. 423; confidential communications to solicitor in the action, but not made at his request: *McCorquodale v. Bell*, 1 C. P. D. 471; agreement of compromise between defendant and third party relating to subject-matter of action: *Hutchinson v. Glover*, 1 Q. B. D. 138; correspondence between vendor and the person from whom he purchased, in an action by vendee for non-delivery: *English v. Tottie*, 1 Q. B. D. 141; reports by mercantile agent to principal on subject-matter of threatened litigation: *Anderson v. Bank of British Columbia*, 2 Ch. D. 644; reports to solicitor procured by him before

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**r. 14.**

litigation was in contemplation: *Wheeler v. Le Marchant*, 17 Ch. D. 675; correspondence between trustees and their solicitors relating to the matters in question in the action, *ante litem motam*: *Re Mason*, 22 Ch. D. 609; letters and documents which passed between two trustees, one of whom was a solicitor and acted as solicitor to the trustees, and as private solicitor for one of them in the transactions sought to be impeached: *Re Postlethwaite*, 35 Ch. D. 722; copies of letters between the defendant and third parties, where the copies had been procured by the solicitor after action brought for the purposes of the defence: *Chadwick v. Borman*, 16 Q. B. D. 561. In *Rawstone v. Mayor of Preston*, 30 Ch. D. 116, shorthand writers' notes taken in an arbitration between plaintiffs and defendants with a view to ulterior proceedings were ordered to be produced in an action between the same parties as to other property. See also *Re Worswick*, 38 Ch. D. 370. A plaintiff in a shareholder's action against a company is entitled to discovery of professional communications between the company and its legal advisers relating to the subject-matter of the action when such communications are paid for out of the funds of the company: *Gouraud v. Edison, &c. Telephone Co.*, 57 L. J., Ch. 498.

*Non-professional communications.*—The privilege will not attach where the communication is not received professionally and in the usual course of business: *Greenough v. Gaskell*, 1 M. & K. 98; and it will not extend to members of other professions than the law: *Slade v. Tucker*, 14 Ch. D. 824; *Anderson v. Bank of British Columbia*, 2 Ch. D. 644.

*Discovery against public policy.*—Official documents may be privileged from production on grounds of public policy, but the objection must be taken on oath by some responsible official: *Kain v. Farrer*, 37 L. T. 469; *H.M.S. Bellerophon*, 44 L. J., Adm. 5.

*Irrelevant documents.*—If irrelevant documents are disclosed, it seems that they need not be produced: *Wilson v. Thornbury*, 17 Eq. 517.

*Joint possession.*—Relevant documents which are in the joint possession of the party disclosing them and some person not a party to the action cannot be ordered to be produced: *Kearsley v. Philips*, 10 Q. B. D. 465; *Kettlewell v. Barstow*, 7 Ch. 686; but it is no ground for resisting production that a person not before the Court has an interest in the documents: *Kettlewell v. Barstow*, at p. 693; and documents will be ordered to be produced if there is no interest which could be affected by their production other than the interest of the parties to the action: *London & Yorkshire Bank v. Cooper*, 15 Q. B. D. 473.

*Husband and wife.*—See as to documents in joint custody of husband and wife, *Fendall v. O'Connell*, 29 Ch. D. 899.

*Committee of Lunatic.*—In an action against defendant, the committee of a lunatic whose title deeds were in possession of the Court having jurisdiction in lunacy, an order on defendant for inspection was set aside: *Vivian v. Little*, 11 Q. B. D. 370.

*Liberty to seal up.*—See *Bray*, pp. 233—238; *Dan. Pr.*, p. 1841. Where the right to seal up is omitted to be claimed when the order for production is made a special application may be made by summons: *Talbot v. Marshfield*, 1 Eq. 6. For form of summons, see *Dan. Forms*, p. 805. As to sealing up partnership books, see *Pickering v. Pickering*, 25 Ch. D. 347. As to unsealing sealed documents, see *Jones v. Andrews*, 68 L. T. 601. The affidavit of sealing up need not state positively that no sealed up portion relates to the matters in question. The affidavit ought to state what has been done, and upon whose investigation the deponent is relying; and, if he has not conducted the investigation himself, he ought to pledge his oath to the belief that nothing sealed up is relevant. In such case, as in the ordinary cases of discovery of documents, the person seeking discovery is bound by the oath of the party making discovery, unless the Court is satisfied from the documents produced, or from something in the affidavit, or from admission of the party making discovery, or necessarily from the circumstances of the case, that the affidavit does not truly state what it ought to state: *S. C.*

*Bankers' Books Evidence Act.*—As to obtaining inspection of bankers' books, see 42 & 43 Vict. c. 11, s. 7. The application may be made *ex parte*: *Arnott v. Hayes*, 36 Ch. D. 731; but see *Davies v. White*, 53 L. J., Q. B. 275. An affidavit is not required where it appears from the pleadings that the inspection was *prima facie* material to the plaintiff's case: *Arnott v. Hayes*, *ubi sup.* The Court of Appeal can entertain an application under the section: *Re Neath Harbour Smelting Works*, 30 Sol. J. 26. As to inspection of the bank books of an



executor who was surviving partner of the testator, see *Re Marshfield*, 32 Ch. D. 499. Any person who before the Act would have had a right to issue a *subpoena duces tecum* can now obtain an order for inspection under the Act: *S. C.*, at p. 501.

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rr. 15—17.

357.

15. Every party to a cause or matter shall be entitled, at any time, by notice in writing, to give notice to any other party, in whose pleadings or affidavits reference is made to any document, to produce such document for the inspection of the party giving such notice, or of his solicitor, and to permit him or them to take copies thereof; and any party not complying with such notice shall not afterwards be at liberty to put any such document in evidence on his behalf in such cause or matter, unless he shall satisfy the Court or a Judge that such document relates only to his own title, he being a defendant to the cause or matter, or that he had some other cause or excuse which the Court or Judge shall deem sufficient for not complying with such notice: in which case the Court or Judge may allow the same to be put in evidence on such terms as to costs and otherwise as the Court or Judge shall think fit.

Notice to produce documents referred to in pleadings or affidavits.  
Effect of non-compliance.  
[O. XXXI. r. 14.]

*Documents referred to in pleadings, &c.*—Documents referred to in particulars are within this rule: *Cass v. Fitzgerald*, W. N. (1884), 18.

*"Cause or excuse."*—Production will be ordered at once of documents referred to in the pleadings unless some special reason against it can be shown: *Quilter v. Heatley*, 23 Ch. D. 42; see also *Webster v. Whehall*, 15 Ch. D. 121.

*Effect of non-compliance.*—Privilege claimed for documents is not lost merely by their being referred to in the pleadings. The penalty for non-production is that they cannot afterwards be used in evidence: *Roberts v. Oppenheim*, 26 Ch. D. 724.

358.

16. Notice to any person to produce any documents referred to in his pleading or affidavits shall be in the Form No. 9 in Appendix B, with such variations as circumstances may require.

Form of notice.  
[O. XXXI. r. 15.]

For such form, see *post*, p. 546.

*Costs.*—By O. LXV., r. 27 (17), no costs of a notice or inspection under r. 15 are to be allowed, unless it is shown to the satisfaction of the taxing officer that there was good reason for it.

359.

17. The party to whom such notice is given shall, within *two days* from the receipt of such notice, if all the documents therein referred to have been set forth by him in such affidavit as is mentioned in Rule 13, or if any of the documents referred to in such notice have not been set forth by him in any such affidavit, then, within *four days* from the receipt of such notice, deliver to the party giving the same a notice stating a time within *three days* from the delivery thereof at which the documents, or such of them as he does not object to produce, may be inspected at the office of his solicitor, or in the case of bankers' books or other books of account, or books in constant use for the purposes of any trade or business, at their usual place of custody, and stating which (if any) of the documents he objects to produce, and on what ground. Such notice shall be in the Form No. 10 in Appendix B, with such variations as circumstances may require.

Production on notice.  
[Cf. O. XXXI. r. 16.]

Place of inspection.

*Effect of Rule.*—This rule authorizes the party producing bank or other business books to produce them for inspection at their usual place of custody, instead of at his solicitor's office. See also next rule.

For form of notice, see *post*, p. 546. As to the costs of production and inspection under the repealed rule, see *Brown v. Sewell*, 16 Ch. D. 517. As to place of production, see *Prestney v. Mayor of Colchester*, 21 Ch. D. 111; 24 Ch. D. 376.



Order XXXI.  
rr. 18—20.

360.

Application  
and order for  
inspection.

[Cf. O. XXXI.  
rr. 17, 18.]

18. If the party served with notice under Rule 17 omits to give such notice of a time for inspection or objects to give inspection, or offers inspection elsewhere than at the office of his solicitor, the Judge may, on the application of the party desiring it, make an order for inspection in such place and in such manner as he may think fit; and, except in the case of documents referred to in the pleadings or affidavits of the party against whom the application is made, or disclosed in his affidavit of documents, such application shall be founded upon an affidavit showing of what documents inspection is sought, that the party applying is entitled to inspect them, and that they are in the possession or power of the other party.

*District Registry.*—By s. 66 of S. C. Jud. Act, 1873, *ante*, p. 49, it may be ordered that books or documents be produced at the office of any District Registry.

*Place of inspection.*—Production is usually ordered to take place at the office of the solicitor of the party to make production, but under this rule the Court has a discretion to order at what place the inspection shall be had, which will not be interfered with by the C. A., except upon special grounds: *Bustros v. Bustros*, 30 W. R. 374; *Prestney v. Mayor of Colchester*, 24 Ch. D. 376. As to place of inspection, see *Dan. Pr.*, pp. 1846, 1847; *Bray*, pp. 164—173. As to bankers' books, &c., see also last note.

*Who may inspect.*—"The form of order directs production to the party, his solicitors and agents; but it seems these words mean his solicitors in the cause, and some person professionally connected with them, or his general agents: *Republic of Costa Rica v. Erlanger*, 23 W. R. 462; and accordingly do not authorize production to an accountant or agent specially employed for the particular purpose of inspecting the documents; but if required by the circumstances of the case, an order directing the production to such a special agent may be made: *Bonnardet v. Taylor*, 1 J. & H. 383; *Lindsay v. Gladstone*, 9 Eq. 132": *Dan. Pr.*, p. 1847; see also *Bray*, pp. 177—180. As to a "personal exception" to a claim to inspect by a particular agent, see *Draper v. M. S. & L. Ry. Co.*, 3 De G., F. & J. 23; *Dadswell v. Jacobs*, 34 Ch. D. 278.

*Discretion.*—As to the discretion vested in the Judge by this rule and the next, see per Brett, L. J., in *Parker v. Wells*, 18 Ch. D. 477, at p. 485. Where parties by consent show documents to the Judge and take his opinion as to whether they should be produced, it seems no appeal lies from his decision on the point: *Bustros v. White*, 1 Q. B. D. 423.

*Copies, &c.*—As to the mode of taking copies of documents, and the costs to be paid, see O. LXV., r. 27 (18), *post*, p. 491. The right to inspect includes the right to take copies: *Pratt v. Pratt*, 30 W. R. 837.

For form of order, see App. K, No. 18, *post*, p. 616.

361.  
Court rolls.

19. An order upon the lord of a manor to allow limited inspection of the Court rolls may be made on the application of a copyhold tenant supported by an affidavit that he has applied for inspection, and that the same has been refused.

This rule is taken from R. G. H. T. 1853, rule 31. As to the practice before that time, see *R. v. Shelley*, 3 T. R. 141; *Ex parte Best*, 3 Dowl. 38. As to inspection of Court rolls, see *Warrick v. Queen's College, Oxford*, 3 Eq. 683; and as to payment of steward's fees for such inspection, see *Hoare v. Wilson*, 4 Eq. 1.

362.  
Decision of  
question on  
which right to  
discovery  
depends.  
[O. XXXI.  
r. 19.]

20. If the party from whom discovery of any kind or inspection is sought objects to the same, or any part thereof, the Court or a Judge may, if satisfied that the right to the discovery or inspection sought depends on the determination of any issue or question in dispute in the cause or matter, or that for any other reason it is desirable that any issue or question in dispute in the cause or matter should be determined before deciding upon the right to the discovery or inspection, order that such issue or question be deter-

mined first, and reserve the question as to the discovery or inspection.

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rr. 20, 21.

**CONSEQUENTIAL DISCOVERY.**—It often happens that one party to an action alleges some fact, such as partnership or agency, for example, which the other denies. If the fact alleged were admitted to be true, it would clearly entitle the party alleging it to discovery. If it were admitted to be untrue, he would as clearly be disentitled to it. By dealing with the question of discovery either way before the other question, on the solution of which the right to discovery really depends, injustice may be done. See *G. W. Colliery Co. v. Tucker*, 9 Ch. 376; *Elmer v. Creasy*, 9 Ch. 69, per Selborne, L. C., at pp. 71, 72. See, also, as to consequential discovery generally, Bray, pp. 24—38. Compare O. XXXVI., r. 8, *post*, p. 289, under which the Court has power to direct the trial of preliminary issues. See also rule 6, *supra*, under which a party may object to answer an interrogatory as not being sufficiently material at that stage; and rule 12, *supra*, under which an application for an affidavit of documents may be adjourned on the same ground.

*Cases under the Rule.*—"Now in deciding whether discovery ought to be given we must first consider whether it will help the plaintiff at the trial. If it will not, but will only be of use if the plaintiff obtains a decree, then, having regard to the discretion given the Court by O. XXXI., r. 19, we must consider whether it is fair that the defendant should be obliged to give it at this stage of the proceedings, or whether to compel him to give it would be oppressive": *Parker v. Wells*, 18 Ch. D. 477, per Jessel, M. R., at p. 483. "I think the rule is one of the most wholesome rules introduced by the Jud. Acts into practice, namely, that no discovery is to be taken from a defendant, unless it is really relevant to the issue first to be tried": *Re Leigh*, 6 Ch. D. 256, per James, L. J., at p. 263. See, also, *Wood v. Anglo-Italian Bank*, 34 L. T. 255; *Ferminck v. Edwards*, 29 W. R. 189; *Leitch v. Abbott*, 31 Ch. D. 374; *Saunders v. Jones*, 7 Ch. D. 435; *Benbow v. Low*, 16 Ch. D. 93; *Houstoun v. Marquis of Sligo*, W. N. (1884), 51; *Fennessy v. Clark*, 37 Ch. D. 184. "The Court is always unwilling, before the right to relief is established, to make an order for discovery which may be injurious to the defendant, and will only be useful to the plaintiff if he succeeds in establishing his title to relief." *Fennessy v. Clark* (*ubi sup.*), per Cotton, L. J., at p. 187.

*Settled accounts.*—In an action impeaching on the ground of fraud accounts alleged to be settled, plaintiff was allowed to have discovery of documents before giving particulars of fraud under O. XIX., r. 6: *Whyte v. Ahrens*, 26 Ch. D. 717. See, also, *Dickson v. Harrison*, 47 L. J., Ch. 686.

*Application.*—For form of summons, see Dan. Forms, p. 804.

**21.** If any party fails to comply with any order to answer interrogatories, or for discovery or inspection of documents, he shall be liable to attachment. He shall also, if a plaintiff, be liable to have his action dismissed for want of prosecution, and, if a defendant, to have his defence, if any, struck out, and to be placed in the same position as if he had not defended, and the party interrogating may apply to the Court or a Judge for an order to that effect, and an order may be made accordingly.

363.  
Disobedience  
to order.  
Consequences.  
[O. XXXI.  
r. 20.]

*Where Rule applicable.*—An order for an account under O. XV., or for the names of partners in a firm under O. XVI., r. 14, is not an order for discovery, and cannot be enforced by attachment under this rule: *Pyke v. Keene*, 24 W. R. 322.

*Discretion.*—It is in the discretion of the Court whether this power should in each case be exercised: *Hartley v. Owen*, 34 L. T. 752.

*Dismissal of action.*—The power under this rule will commonly only be exercised in the last resort: *Twyeross v. Grant*, W. N. (1875), 201, 229; *Anon.*, *ibid.*, 202; *Dauvillier v. Myers*, W. N. (1883), 58. In *Dauvillier v. Myers* (*ubi sup.*), the action was dismissed, although the dismissal had the effect of defeating the plaintiff's action also as to those parts of his demand to which the discovery sought did not relate.

*Enlargement of time.*—As to enlarging the time when an action has been dismissed under this rule, see *Carter v. Stubbs*, 6 Q. B. D. 116; *Republic of Liberia v. Roye*, 1 App. Cas. 139, at pp. 143, 144.



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rr. 21—24.

*Partial discovery.*—Where an order for discovery was made against husband and wife, and the husband absconded, and the affidavit was made by the wife alone, the Court refused to make an order: *Hartley v. Owen*, 34 L. T. 752. Where the Court is satisfied that the plaintiffs, who have not joined in the affidavit of documents, are not in a position to do so, the action will not be dismissed: *Wilson v. Raffalovitch*, 7 Q. B. D. 553, at p. 561.

*Incapacity to answer.*—Where, after action brought, plaintiff became incapable of transacting business, and did not comply with orders for discovery, the Court refused to dismiss the action, but gave leave to amend by adding a next friend: *Cardwell v. Tomlinson*, 52 L. T. 746.

*Application.*—For form of summons, see Dan. Forms, p. 812.

*Striking out defence.*—See *Twyecross v. Grant*, W. N. (1875), 201, 229; *Fisher v. Hughes*, 25 W. R. 528. An order to strike out a defence was set aside on the terms of defendant paying into Court, or giving security for, the amount of the claim: *Gibson v. Sykes*, 28 Sol. J. 533.

*Application.*—For form of summons, see Dan. Pr., p. 812.

*Attachment.*—See, as to attachment generally, O. XLIV., *post*, p. 352. As to attachment under this rule, see *Bray*, pp. 584—587.

*Service of affidavits.*—A copy of affidavits in support of application to commit for contempt in disobeying an order for discovery must be served with the notice of motion under O. LII., r. 4: *Litchfield v. Jones*, 25 Ch. D. 64.

*Inability to comply with order.*—Where it is shown that the party is unable to make an affidavit of documents, an attachment will not be granted: *Wilson v. Raffalovitch*, 7 Q. B. D. 553, at p. 561.

*Compliance before enforcement of writ.*—Where an affidavit of documents was filed and notice given, after issue of a writ of attachment, but before it was enforced, and the defendant was nevertheless arrested, it was held that such arrest was altogether irregular, and that it was the duty of the plaintiff's solicitor to have stayed the enforcement of the writ: *Gay v. Hancock*, 56 L. T. 726.

*Costs of motion.*—See *Thomas v. Palin*, 21 Ch. D. 360.

364.

Service of  
order.  
Attachment.  
[Cf. O. XXXI.  
r. 21.]

**22.** Service of an order for interrogatories or discovery or inspection made against any party on his solicitor shall be sufficient service to found an application for an attachment for disobedience to the order. But the party against whom the application for an attachment is made may show in answer to the application that he has had no notice or knowledge of the order.

The repealed rule did not expressly include an order for interrogatories, but it was held to apply to such an order: *Re Mulcaster*, 47 L. J., Ch. 609.

*Indorsement on order.*—In order to ground attachment the order must bear the indorsement prescribed by O. XLI., r. 5, *post*, p. 337: *Hampden v. Wallis*, 26 Ch. D. 746.

*Service.*—Service on solicitor held sufficient to found application for attachment: *Joy v. Hadley*, 22 Ch. D. 571.

365.

Duty of soli-  
citor served  
with order.  
[Cf. O. XXXI.  
r. 22.]

**23.** A solicitor upon whom an order against any party for interrogatories or discovery or inspection is served under the last preceding Rule, who neglects without reasonable excuse to give notice thereof to his client, shall be liable to attachment.

366.

Use of answer  
at trial.  
[Cf. O. XXXI.  
r. 23.]

**24.** Any party may, at the trial of a cause, matter, or issue, use in evidence any one or more of the answers or any part of an answer of the opposite party to interrogatories without putting in the others or the whole of such answer: Provided always, that in such case the Judge may look at the whole of the answers, and if he shall be of opinion that any others of them are so connected with those put in that the last-mentioned answers ought not to be used without them, he may direct them to be put in.

*Reading part of an answer.*—See *Bray*, pp. 600—602; *Lyell v. Kennedy* (No. 2), 27 Ch. D. 1.



25. In every cause, or matter, the costs of discovery, by interrogatories or otherwise, shall, unless otherwise ordered by the Court or a Judge, be secured in the first instance as provided by Rule 26 of this Order, by the party seeking such discovery, and shall be allowed as part of his costs where, and only where, such discovery shall appear to the Judge at the trial, or, if there is no trial, to the Court or a Judge, or shall appear to the taxing officer, to have been reasonably asked for.

*Where Rules apply.*—The above and the next following rule do not apply to an order for the discovery of ship's papers: *Law and Lindsay v. Budd*, W. N. (1883), 166; nor to an application for production of a document in which both parties to the action have a common interest: *Brown v. Liell*, 16 Q. B. D. 229.

**DISPENSING WITH DEPOSIT.**—Security will only be dispensed with where there is genuine inability to make it: *Henderson v. Ripley*, W. N. (1884), 85. It cannot be dispensed with by consent: *Aste v. Stumore*, 13 Q. B. D. 326; *Hall v. Liardet*, W. N. (1883), 175.

"The deposit was intended for the protection of the clients themselves": *Aste v. Stumore*, at p. 329, per Brett, M. R. The fact that the parties have already given security for the costs of the action is no ground for waiving security under these rules: *Comp. du Pacifique v. Guano Co.*, W. N. (1883), 166.

*Discretion.*—Whether a Judge has not a discretion, *quære*: *Aste v. Stumore*; but see *Boarder v. Lindsay*, 34 W. R. 473, where it was held there was no discretion.

*Poverty.*—Security has been dispensed with on the ground of poverty: *Burr v. Hubbard*, W. N. (1883), 198; *Smith v. Went*, 32 W. R. 512. See also *Comp. du Pacifique v. Guano Co.*, W. N. (1883), 166; *Henderson v. Ripley*, W. N. (1884), 85.

*Several deposits.*—Where interrogatories are delivered to more than one defendant, the deposit must be made in respect of each set of interrogatories: *Smith v. Reed*, W. N. (1883), 196; but where an application for an order for discovery was made against co-plaintiffs, it was held that a single deposit was sufficient: *Campbell v. Poulett*, W. N. (1884), 48. In a co-ownership action, with numerous defendants, the Court ordered the plaintiff who desired to interrogate to deposit 5*l.* and 10*s.* for each additional folio over five, and no more: *The Whickham*, 53 L. T. 236.

26. Any party seeking discovery by interrogatories shall, before delivery of interrogatories, pay into Court to a separate account in the action, to be called "Security for Costs Account," to abide further order, the sum of 5*l.*, and, if the number of folios exceeds five, the further sum of 10*s.* for every additional folio. Any party seeking discovery otherwise than by interrogatories shall, before making application for discovery, pay into Court, to a like account, to abide further order, the sum of 5*l.*, and may be ordered further to pay into Court as aforesaid such additional sum as the Court or a Judge shall direct. The party seeking discovery shall, with his interrogatories or order for discovery, serve a copy of the receipt for the said payment into Court, and the time for answering or making discovery shall in all cases commence from the date of such service. The party from whom discovery is sought shall not be required to answer or make discovery unless and until the said payment has been made.

*Security for costs.*—The deposit is security for the general costs of the cause: *Jubb v. Bibbs*, W. N. (1883), 208.

*Payment into Court.*—See S. C. Funds Rules, 1886, rules 30, 32, 33, *post*, pp. 733, 735.

*Folio.*—A folio is 72 words: O. LXV., r. 27 (14), *post*, p. 491.

*Time for answering, &c.*—The time runs from the service of the receipt, and cannot be abridged: *Jones v. Jones*, W. N. (1884), 17.

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rr. 25, 26.

367.  
Costs of  
discovery.

368.  
Deposit before  
discovery.  
Scale.

Receipt.

Order XXXI.  
rr. 27, 28.

369.

Repayment of  
deposit.

**27.** Unless the Court or a Judge shall at or before the trial otherwise order, the amount standing to the credit of the "Security for Costs Account" in any cause or matter, shall, after the cause or matter has been finally disposed of, be paid out to the party by whom the same was paid in on his request, or to his solicitor on such party's written authority, in the event of the costs of the cause or matter being adjudged to him, but, in the event of the Court or Judge ordering him to pay the costs of the cause or matter, the amount in Court shall be subject to a lien for the costs ordered to be paid to any other party.

As to payment of money out of Court generally, see rules 44 *et seq.* of the S. C. Funds Rules, 1886, *post*, p. 738, and see the next rule and note thereto.

**27A.** If after a cause or matter has been finally disposed of, by consent or otherwise, no taxation of costs shall be required, the taxing officer, master, or chief clerk (as the case may be) may, either by consent of the parties, or on being satisfied that any party who has lodged any money to the "Security for Costs Account" in such cause or matter has become entitled to have the same paid out to him, give a certificate to that effect, which certificate shall be acted on and have effect in all respects as if the same had been an order made in the said cause or matter.

This rule was introduced in October, 1884.

See S. C. Funds Rules, 1886, r. 44 (C), *post*, p. 739.

370.

Discovery  
by sheriff's  
officer.

**28.** In any action against or by a sheriff in respect of any matters connected with the execution of his office, the Court or a Judge may, on the application of either party, order that the affidavit to be made in answer either to interrogatories or to an order for discovery, shall be made by the officer actually concerned.

This rule was introduced in 1883, and appears to have been framed to meet a difficulty which often arose where a sheriff against whom an action had been brought for the acts of his officer was entirely ignorant of the circumstances of the case.

Order XXXII.  
r. 1.

371.

Notice of  
admission of  
case.

[Cf. O.  
XXXII. r. 1.]

## ORDER XXXII.

### ADMISSIONS.

**1.** Any party to a cause or matter may give notice, by his pleading, or otherwise in writing, that he admits the truth of the whole or any part of the case of any other party.

**ADMISSIONS.**—Admissions may be considered as being (1) on the record; (2) between the parties.

(1.) *Admissions on the record:*—

(a) *Actual*; i.e., either on the pleadings (O. XIX., r. 13, *ante*, p. 209), or in answer to interrogatories (O. XXXI., r. 24, *ante*, p. 266).

(b) *Implied*; from the pleadings (O. XIX., rr. 13, 17, 19, *ante*, pp. 209—211).

(2.) *Admissions between the parties:*—

(c) By agreement.

(d) By notice.

See Dan. Pr., pp. 548—551, 572—577; Dan. Forms, p. 260, n. (b); 1 Seton, pp. 29—32; Chitt. Arch., p. 477; Chitt. Forms, p. 258.

*Filing admissions.*—See O. LXI., rr. 15, 31, *post*, pp. 458, 460.

*Facts admitted on pleading.*—Where the defendant admitted all the facts in a statement of claim in a salvage action, it was held that the plaintiff could not



be allowed to call evidence except by permission of the Court, and on special grounds: *The Hardwick*, 9 P. D. 32.

Order XXXII.  
rr. 2—4.

2. Either party may call upon the other party to admit any document, saving all just exceptions; and in case of refusal or neglect to admit, after such notice, the costs of proving any such document shall be paid by the party so neglecting or refusing, whatever the result of the cause or matter may be, unless at the trial or hearing the Court or a Judge shall certify that the refusal to admit was reasonable; and no costs of proving any document shall be allowed unless such notice be given, except where the omission to give the notice is, in the opinion of the taxing officer, a saving of expense.

372.  
Notice to  
admit docu-  
ments.  
[O. XXXII.  
r. 2.]

This rule corresponds with s. 117 of the C. L. P. Act, 1852, and s. 7 of Lord Cairns' Act (now repealed).

*Admissions between co-defendants.*—Admissions between co-defendants, to which the plaintiff is not a party, cannot be entered as evidence against the plaintiff, and therefore cannot be included in an order for taxation and payment of the general costs of the action: *Dodds v. Tuke*, 25 Ch. D. 617.

3. A notice to admit documents shall be in the Form No. 11 in Appendix B, with such variations as circumstances may require.

For such form, see *post*, p. 546.

373.  
Form of  
notice.  
[O. XXXII.  
r. 3.]

4. Any party may, by notice in writing, at any time not later than *nine days* before the day for which notice of trial has been given, call on any other party to admit, for the purposes of the cause, matter, or issue only, any specific fact or facts mentioned in such notice. And in case of refusal or neglect to admit the same within *six days* after service of such notice, or within such further time as may be allowed by the Court or a Judge, the costs of proving such fact or facts shall be paid by the party so neglecting or refusing, whatever the result of the cause, matter, or issue may be, unless at the trial or hearing the Court or a Judge certify that the refusal to admit was reasonable, or unless the Court or a Judge shall at any time otherwise order or direct. Provided that any admission made in pursuance of such notice is to be deemed to be made only for the purposes of the particular cause, matter, or issue, and not as an admission to be used against the party on any other occasion or in favour of any person other than the party giving the notice: provided also, that the Court or a Judge may at any time allow any party to amend or withdraw any admission so made on such terms as may be just.

374.  
Notice to  
admit facts.

*Object of Rule.*—In the first report of the Judicature Commission, p. 14, the Commissioners (referring to the admission of documents) say: "We think that a similar practice might with advantage be extended to the admission of certain facts as well as documents; and therefore we recommend that if it be made to appear to the Judge, at or before the trial of any case, that one of the parties was, a reasonable time before the trial, required in writing to admit any specific fact, and without reasonable cause refused to do so, the Judge should either disallow to such party, or order him to pay (as the case may be), the costs incurred in consequence of such refusal."

The present rule carries out this recommendation, and applies to facts generally the system of notice to admit embodied as to documents in the preceding rules.

It appears from O. XXXI., r. 2, that the notice to admit facts should, where practicable, supersede interrogatories.



Order XXXII.  
rr. 4—6.

*Notice to admit facts.*—A notice to admit facts cannot be set aside: *Crawford v. Chorley*, W. N. (1883), 198. The service of a notice to admit facts does not preclude the delivery of interrogatories for the same purpose: *Hellier v. Ellis*, W. N. (1884), 9.

375.  
Forms of ad-  
missions.

5. A notice to admit facts shall be in the Form No. 12 in Appendix B, and admissions of facts shall be in the Form No. 13 in Appendix B, with such variations as circumstances may require.

For the forms referred to, see *post*, pp. 547, 548.

376.  
Judgment on  
admissions.  
[Cf. O. XL.  
r. 11.]

6. Any party may at any stage of a cause or matter, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the Court or a Judge for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the Court or a Judge may upon such application make such order, or give such judgment, as the Court or Judge may think just.

*Effect of Rule.*—This rule reproduces the provisions of the repealed O. XL., r. 11, with two important modifications. First, it applies to admissions given otherwise than by admissions on the pleadings under O. XIX., r. 13. Secondly, it does not require the application to be made by motion.

*Mode of application.*—The words “or a Judge” in the rule imply that the application may be made by summons: *Padgett v. Binns*, W. N. (1884), 10; and see *Gough v. Heatley*, W. N. (1884), 14; but (per Kay, J., in *Cook v. Heynes*, W. N. (1884), 75) under ordinary circumstances the application should, in the Chancery Division, be made by motion. Where, by their defence, defendants offered to consent to a perpetual injunction, to be obtained on summons issued for the purpose, North, J., refused to allow the extra costs occasioned by the plaintiff setting down the action on motion for judgment: *London Steam Dyeing Co. v. Digby*, 36 W. R. 497.

“Or otherwise.”—*Quære*, whether these words refer only to cases in which notice has been given under rr. 1 and 4 of this Order; it is a question of some nicety: *Landeragan v. Feast*, 34 W. R. 691.

*Time for making the application.*—Plaintiff may move notwithstanding he has joined issue and given notice of trial: *Brown v. Pearson*, 21 Ch. D. 716. Where plaintiff had, before notice of motion, though out of time, delivered a reply, the motion was refused: *Graves v. Terry*, 9 Q. B. D. 170.

*Cases.*—Under the repealed rule the following orders were made where the facts admitted gave a right to them, namely, for accounts: *Turquand v. Wilson*, 1 Ch. D. 85; *Rumsey v. Reade*, *ibid.* 643; for inquiries in a partition suit: *Gilbert v. Smith*, 2 Ch. D. 686; for dissolution of partnership: *Thorp v. Holdsworth*, 3 Ch. D. 637; for judgment against a husband, in an action against husband and wife, where the statement of defence showed a defence by the wife, but none by the husband: *Jenkins v. Davies*, 1 Ch. D. 696; for a trustee to bring money into Court: *Symonds v. Jenkins*, 34 L. T. 277; see further as to ordering payment into Court on admissions: *London Syndicate v. Lord*, 8 Ch. D. 84; *Freeman v. Cox*, 8 Ch. D. 148, and cases cited *infra*; for a decree or decretal order in an administration action: *Hetherington v. Longrigg*, 10 Ch. D. 162; for foreclosure in an action by the assignee of a mortgage: *Rutter v. Tregent*, 12 Ch. D. 758; and for a sale of bonds on which the plaintiff claimed a charge: *Coddington v. Jacksonville Ry.*, 39 L. T. 12. See also *Honduras Co. v. Lefevre*, 2 Ex. D. 301; *Rolfe v. Maclaren*, 3 Ch. D. 106; *Clutton v. Lee*, 7 Ch. D. 541, n. In an action for a liquidated sum the defendants admitted the claim and set up a counter-claim for damages to a greater amount. The Court refused an application for an order to enter judgment for the plaintiffs on the claim and for payment of the amount thereof by the defendants into Court: *Mersey S. S. Co. v. Shuttleworth*, 11 Q. B. D. 531; but see *Showell v. Bowron*, 31 W. R. 550.

*Payment into Court.*—Where the defendant made an admission before action that certain money was in his hands, and in the action the plaintiff made an affidavit

to that effect which was not contradicted by the defendant, the Court held that, whether the case came within this rule or not, there was jurisdiction to order the money to be paid into Court: *Porrett v. White*, 31 Ch. D. 52. See, also, *Hampden v. Wallis*, 27 Ch. D. 251; *Wanklyn v. Wilson*, 35 Ch. D. 180. An order will not be made under this rule in an action for money lent unless there is a clear admission that the debt is recoverable in the action in which the admission is made: *Landergan v. Feast*, 31 W. R. 691.

Order XXXII.  
rr. 6—9.

*Admission of infringement of patent.*—Where in an action for infringement of a patent the defendant admitted ten infringements and no more, plaintiff was held entitled to an injunction and inquiry as to damages limited to the admitted instances of infringement: *United Telephone Co. v. Donohoe*, 31 Ch. D. 399.

*Defendant.*—Where a plaintiff has replied specially, a defendant may move on admissions to dismiss the action: *Pascoe v. Richards*, 29 W. R. 330; but a defendant cannot move on admissions for judgment on his counter-claim: *Rolfe v. Maclaren*, 5 Ch. D. 106.

*Admission by one of several defendants.*—Where one defendant does not appear, or does not deliver a defence, and another delivers a defence on which the plaintiff's right to relief is admitted, the plaintiff may proceed against the latter under this rule, and against the former by default under O. XXVII.: see *Re Smith's Estate*, 24 W. R. 392; *Parsons v. Harris*, 6 Ch. D. 694.

*Implied admissions by default in pleading.*—In such case the action must be set down on motion for judgment: *Caroli v. Hirst*, 31 W. R. 339.

*Discretion.*—It is in the discretion of the Judge to give relief under this rule: *Mellor v. Sidebottom*, 5 Ch. D. 342. The relief should only be given in clear cases: *Chilton v. London Corporation*, 7 Ch. D. 735.

*Procedure optional.*—The procedure under this rule is optional, and a party who does not avail himself of it does not waive his right to rely on admissions at the trial: *Tildesley v. Harper*, 7 Ch. D. 403 (overruled on another point 10 Ch. D. 393).

*Further consideration.*—An order under this rule may be made reserving further consideration, without any further prior hearing: *Bennett v. Moore*, 1 Ch. D. 692; *Gilbert v. Smith*, 2 Ch. D. 686; *Brassington v. Cussons*, 24 W. R. 881; and with liberty to apply to have the further hearing taken in chambers: *Gilbert v. Smith*, *ubi sup.*

7. An affidavit of the solicitor or his clerk, of the due signature of any admissions made in pursuance of any notice to admit documents or facts, shall be sufficient evidence of such admissions, if evidence thereof be required.

377.  
Affidavit of signature.  
[Cf. O. XXXII. r. 4.]

*Effect of Rule.*—This rule extends the corresponding repealed rule of 1875 to admissions of facts.

8. Notice to produce documents shall be in the Form No. 14 in Appendix B, with such variations as circumstances may require. An affidavit of the solicitor, or his clerk, of the service of any notice to produce, and of the time when it was served, with a copy of the notice to produce, shall in all cases be sufficient evidence of the service of the notice, and of the time when it was served.

378.  
Notice to produce documents.

For the form referred to, see *post*, p. 548. The repealed rules contained no express provision as to notice to produce documents at the trial.

9. If a notice to admit or produce comprises documents which are not necessary, the costs occasioned thereby shall be borne by the party giving such notice.

379.  
Costs.

This rule was introduced in 1883.



Ord. XXXIII.  
rr. 1—3.

## ORDER XXXIII.

## ISSUES, INQUIRIES, AND ACCOUNTS.

380.  
Settlement of  
issues.  
[Cf. O.  
XXVI.]

1. Where in any cause or matter it appears to the Court or a Judge that the issues of fact in dispute are not sufficiently defined, the parties may be directed to prepare issues, and such issues shall, if the parties differ, be settled by the Court or a Judge.

An order under this rule for settlement of issues was made by Hawkins, J., in *Maclachlan v. Agnew*, reported in the *Times* of March 24th, 1885.

381.  
At what stage  
inquiries or  
accounts  
directed.  
[O. XXXIII.  
r. 2.]

2. The Court or a Judge may, at any stage of the proceedings in a cause or matter, direct any necessary inquiries or accounts to be made or taken, notwithstanding that it may appear that there is some special or further relief sought for or some special issue to be tried, as to which it may be proper that the cause or matter should proceed in the ordinary manner.

Cf. C. O. XX., and C. O. XXXV., r. 19, both of which are repealed. For cases under C. O. XX., see Morgan, p. 397.

*Cases under the Rule.*—See *Turquand v. Wilson*, 1 Ch. D. 85; *Rolfe v. Maclaren*, 3 Ch. D. 106; *Rumsey v. Reade*, 1 Ch. D. 643. The rule was not intended to authorize the sending the whole of the questions in a cause to be tried in Chambers, but only to authorize the Court to direct, before trial, accounts and inquiries, which otherwise would have been directed at the trial: *Garnham v. Skipper*, 29 Ch. D. 566. For a case in which inquiries were directed to be made into matters in issue before the hearing, see *West London Dairy Co. v. Abbott*, 44 L. T. 376. For an inquiry as to the sums due for repairs in an action for necessities against a ship, see *The Sully*, 48 L. J., P. D. 56. The Court will not order a prospective account to be taken: *Witham v. Vane*, W. N. (1884), 98.

*Further accounts, &c.*—"Further accounts or inquiries must be such accounts, or inquiries only, as are auxiliary to the final working out of the judgment which has been pronounced by the Court: not such as are at variance with its principle; and nothing must be added that is not fairly in issue in the cause or raised upon the pleadings": Dan. Pr., p. 1011; *Partington v. Reynolds*, 4 Drew. 253, at p. 266; *Foster v. Foster*, 3 Ch. 330. For a case in which in a foreclosure action an inquiry as to improper working by the plaintiffs, as mortgagees in possession, was directed, after judgment, see *Taylor v. Mostyn*, 33 Ch. D. 226.

*Wilful default.*—Must be charged in the pleadings, otherwise a direction charging defendant on the footing of wilful default cannot be added to an ordinary administration judgment; if so charged an order may be made at any time during the progress of the action: *Mayer v. Murray*, 8 Ch. D. 424 (explaining *Job v. Job*, 6 Ch. D. 562); *Re Symons*, 21 Ch. D. 757; *Barber v. Mackrell*, 12 Ch. D. 534. But the plaintiff ought to be prepared to prove at the hearing allegations of wilful default: *Smith v. Armitage*, 24 Ch. D. 727. Leave of the Court is required before an action on the footing of wilful default is brought against a person who is defendant to an action in which an ordinary administration decree has been obtained: *Laming v. Gee*, 10 Ch. D. 715.

*Taking accounts in District Registry.*—See *Irlam v. Irlam*, 2 Ch. D. 608; *Hutchinson v. Ward*, 6 Ch. D. 692.

*Application under Rule.*—Is usually by summons: Dan. Pr., pp. 570, 1011; Dan. Forms, pp. 258, 259.

382.  
Account how  
taken, and  
evidence.

3. The Court or a Judge may, either by the judgment or order directing an account to be taken or by any subsequent order, give special directions with regard to the mode in which the account is to be taken or vouched, and in particular may direct that in taking



the account, the books of account in which the accounts in question have been kept, shall be taken as *prima facie* evidence of the truth of the matters therein contained, with liberty to the parties interested to take such objections thereto as they may be advised.

Ord. XXXIII.  
rr. 3—7.

This rule in substance reproduces s. 54 of 15 & 16 Vict. c. 86. For cases under that section, see Dan. Pr., pp. 1053, 1054; Morgan, p. 398.

*Application.*—After the hearing should be by summons in Chambers: *Hardwick v. Wright*, 15 W. R. 953. For form of summons, see Dan. Forms, pp. 523, 524. For forms of order, see 2 Seton, p. 774, Nos. 6, 7, 8.

4. Where any account is directed to be taken, the accounting party, unless the Court or a Judge shall otherwise direct, shall make out his account and verify the same by affidavit. The items on each side of the account shall be numbered consecutively, and the account shall be referred to by the affidavit as an exhibit and be left in the Judge's Chambers, or with the official or other referee, as the case may be.

383.  
Verification by affidavit.

This rule is taken from C. O. XXXV., r. 33.

*Accounts.*—See Dan. Pr., pp. 1043—1062; Dan. Forms, pp. 506—525.

*Cross-examination.*—"The accounting party may be cross-examined upon his account, and the charging party upon the particulars of the amount with which he wishes to charge the accounting party; but in each case notice of the items to which the cross-examination will be directed must be given": Dan. Pr., pp. 1049, 1050; *Wormsley v. Sturt*, 22 Beav. 398; *Re Lord*, 2 Eq. 605; *McArthur v. Dudgeon*, 15 Eq. 102; *Bates v. Eley*, 1 Ch. D. 473. The notice should specify whether it is intended to dispute any items or the whole account: *Woods v. Oliver*, W. N. (1880), 51.

4A. Upon the taking of any account the Court or a Judge may direct that the vouchers shall be produced at the office of the solicitor of the accounting party, or at any other convenient place, and that only such items as may be contested or surcharged shall be brought before the Judge in Chambers.

383a.  
Production of vouchers.

This rule is r. 8 of R. S. C., Dec. 1885.

5. Any party seeking to charge any accounting party beyond what he has by his account admitted to have received shall give notice thereof to the accounting party, stating, so far as he is able, the amount sought to be charged and the particulars thereof in a short and succinct manner.

384.  
Surcharging.

This rule reproduces C. O. XXXV., r. 34.

*Surcharge.*—See Dan. Pr., p. 1049; Dan. Forms, p. 523.

6. Every judgment or order for a general account of the personal estate of a testator or intestate shall contain a direction for an inquiry what parts (if any) of such personal estate are outstanding or undisposed of, unless the Court or a Judge shall otherwise direct.

385.  
Inquiry as to out-standing personal estate.

This rule reproduces C. O. XXIII., r. 14.

7. Where by any judgment or order, whether made in Court or in Chambers, any accounts are directed to be taken or inquiries to be made, each such direction shall be numbered so that, as far as

386.  
Directions to be numbered.

**Ord. XXXIII.** may be, each distinct account and inquiry may be designated by a  
**rr. 7—9.** number, and such judgment or order shall be in the Form No. 28,  
 in Appendix L, with such variations as the circumstances of the  
 case may require.

This rule reproduces C. O. XXIII., r. 15.

*Form.*—See *post*, p. 651.

387.  
 Allowances to  
 be made.

**8.** In taking any account directed by any judgment or order, all just allowances shall be made without any direction for that purpose.

This rule reproduces C. O. XXIII., r. 16.

*Just allowances.*—As to what are just allowances, see Dan. Pr., pp. 1054—1060; Morgan, p. 399, and cases there cited.

388.  
 Proceedings if  
 accounts de-  
 layed.

**9.** If it shall appear to the Court or a Judge, on the representation of any chief clerk or otherwise, that there is any undue delay in the prosecution of any accounts or inquiries, or in any other proceedings under any judgment or order, the Court or Judge may require the party having the conduct of the proceedings, or any other party, to explain the delay, and may thereupon make such order with regard to expediting the proceedings or the conduct thereof, or the stay thereof, and as to the costs of the proceedings, as the circumstances of the case may require; and for the purposes aforesaid any party or the official solicitor may be directed to summon the persons whose attendance is required, and to conduct any proceedings and carry out any directions which may be given; and any costs of the official solicitor shall be paid by such parties or out of such funds as the Court or Judge may direct; and if any such costs be not otherwise paid, the same shall be paid out of such moneys (if any) as may be provided by Parliament.

This rule was introduced in 1883. It is taken in part from C. O. XXXV., r. 23.

*Next friend of infant.*—Where the Court had made an order removing the next friend of an infant and directing that the official solicitor should be named as the next friend in all future proceedings, the ground of the order being that the solicitor of the next friend had incurred unnecessary costs, the C. A. discharged the order, as the Court had power to call upon the next friend to change his solicitor, and power over the solicitor, under O. LXV., r. 11: *Re Corsellis*, 32 W. R. 965.

**Ord. XXXIV.**  
**r. 1.**

## ORDER XXXIV.

### I. SPECIAL CASE.

389.  
 Special case  
 by consent.  
 [Cf. O.  
 XXXIV. r. 1.]  
*Form.*  
*Documents.*

**1.** The parties to any cause or matter may concur in stating the questions of law arising therein in the form of a special case for the opinion of the Court. Every such special case shall be divided into paragraphs numbered consecutively, and shall concisely state such facts and documents as may be necessary to enable the Court to decide the questions raised thereby. Upon the argument of such case the Court and the parties shall be at liberty to refer to the



whole contents of such documents, and the Court shall be at liberty to draw from the facts and documents stated in any such special case any inference, whether of fact or law, which might have been drawn therefrom if proved at a trial.

Ord. XXXIV.  
rr. 1, 2.

Inference of  
fact.

**SPECIAL CASE.**

*Former practice.*—The power of stating a special case in the Common Law Courts depended upon 3 & 4 Will. IV. c. 42, s. 25, and ss. 46, 47, and 179 of the C. L. P. Act, 1852. This right was constantly exercised; the ordinary practice being, that if the parties could not agree upon the statement of the case, it was settled by an arbitrator. In Chancery, the power to proceed by special case depended on Sir G. Turner's Act (13 & 14 Vict. c. 35).

*Effect of Rule.*—The corresponding repealed rule applied only to actions. The present rule enables a special case to be stated in any cause or matter. For the definitions of "cause" and "matter," see S. C. Jud. Act, 1873, s. 100, *ante*, p. 63. The repealed rule allowed the case to be stated at any time after writ. The present rule contains no indication of time.

*Modes of stating special case.*—There appear to be three modes in which a special case may be stated, viz., (1) by consent of the parties in any cause or matter, under this rule; (2) by order of the Court or a Judge: rule 2, *infra*; (3) as an original proceeding, as provided by 13 & 14 Vict. c. 35: rule 9, *infra*. A special case may be stated in interpleader proceedings: O. LVII., r. 9, *post*, p. 431. As to a special case generally and the practice thereon, see Dan. Pr., pp. 1966—1970; Dan. Forms, pp. 853—857; 1 Seton, 43—49; Chitt. Arch., pp. 1343—1346; Chitt. Forms, pp. 680—685.

*Amendment of special case.*—There is no jurisdiction to amend a special case after the hearing. Where a special case is stated in an action, and a decision given upon it under a mistake of fact, the Court is not bound by that decision unless it has been adopted by subsequent orders, but may disregard it, direct the action to go on to trial, and direct inquiries to ascertain the real facts: *Re Taylor's Estate*, 22 Ch. D. 495. Where a special case is stated by consent, after it has been finally agreed and signed, it can only be re-opened by mutual consent: *Hamilton, Fraser & Co. v. Staley, Radford & Co.*, 28 Sol. J. 478.

*Form of answers.*—Where a special case is stated in an action, and the answers in fact dispose of the action, the proper course is to take the answers in the shape of a judgment, making declarations to the effect of the answers, the action being, if necessary, set down *pro forma* for trial on motion for judgment: *Harrison v. Cornwall Minerals Ry. Co.*, 16 Ch. D. 66.

*Appeal.*—A judgment given on a special case may be appealed from: *Re Taylor's Estate*, 22 Ch. D. 495. A party to the case, who has not appeared on the hearing in the Court below, is not, it seems, entitled to appeal from the judgment then given: *Allum v. Dickinson*, 9 Q. B. D. 632.

2. If it appear to the Court or a Judge, that there is in any cause or matter a question of law, which it would be convenient to have decided before any evidence is given or any question or issue of fact is tried, or before any reference is made to a Referee or an Arbitrator, the Court or Judge may make an order accordingly, and may direct such question of law to be raised for the opinion of the Court, either by special case or in such other manner as the Court or Judge may deem expedient, and all such further proceedings as the decision of such question of law may render unnecessary may thereupon be stayed.

390.

Preliminary  
question of  
law.

[Cf. O.  
XXXIV. r. 2.]

Special case  
without con-  
sent.

*Effect of Rule.*—The last preceding rule enables the parties to state a case by consent. The present rule enables a Judge to raise a question of law by special case or otherwise, without consent.

The corresponding repealed rule applied only to actions. This rule, like the preceding one, has been extended to "any cause or matter." The repealed rule required that the facts should appear by the "statement of claim or defence, or reply, or otherwise," and these words were held to include affidavits made before statement of claim: *Metropolitan Board v. New River Co.*, 2



Ord. XXXIV.  
rr. 2—5.

Q. B. D. 67. The words cited above have apparently been omitted from the present rule as superfluous. By analogy to this rule, the Court may, at the trial of an action involving questions both of fact and law, decide the question of law first, if it appears that the decision of that question may render it unnecessary to try the question of fact: *Pooley v. Driver*, 5 Ch. D. 458.

*Cases.*—A special case stated under this rule must be upon a real, not a hypothetical, state of facts: *Republic of Bolivia v. Bolivian Navigation Co.*, 24 W. R. 361. The Court refused to decide questions affecting persons not *in esse*, or questions which might never arise: *Bright v. Tyndall*, 4 Ch. D. 189. Now that demurrers are abolished, it is very desirable that questions of law, the decision of which may make unnecessary the trial of any questions of fact, should be first disposed of: *Tattersall v. National Steamship Co.*, W. N. (1884), 32.

*Discretion of Court.*—The C. A. will not, except in an extreme case, interfere with the discretion of the Court below in directing the statement of a special case: *Metropolitan Board v. New River Co.*, 2 Q. B. D. 67.

*Application.*—In the Chancery Division the application is made by motion or summons: Dan. Pr., p. 1967; Dan. Forms, p. 854. In Q. B. Division the application is by summons: see Chitt. Arch., pp. 1343, 1344; Chitt. Forms, p. 681.

391.  
Printing case.  
[Cf. O.  
XXXIV. r. 3.]

3. Every special case shall be printed by the plaintiff and signed by the several parties or their counsel or solicitors, and shall be filed by the plaintiff. Three printed copies for the use of the Judges shall be left therewith.

The last sentence in this rule was inserted by r. 9 of R. S. C., Dec., 1885.

*Signature of counsel.*—Under the corresponding rule of R. S. C., 1875 (O. XXXIV., r. 3), it was decided that the signature of counsel was not necessary: *Hare v. Hare*, W. N. (1876), 44. The words “or their counsel” have been added to the present rule. It is presumed that the provisions of O. XIX., r. 4, under which a pleading, if settled by counsel, must be signed by him, apply to a special case.

392.  
Persons under  
disability.  
[Cf. O.  
XXXIV. r. 4.]

4. No special case in any cause or matter to which a married woman, (not being a party thereto in respect of her separate property or of any separate right of action by or against her,) infant, or person of unsound mind not so found by inquisition is a party, shall be set down for argument without leave of the Court or a Judge, the application for which must be supported by sufficient evidence that the statements contained in such special case, so far as the same affect the interest of such married woman, infant, or person of unsound mind, are true.

*Object of Rule.*—The words in brackets are presumably introduced to give effect to the provisions of the Married Women's Property Act, 1882; see notes to O. XVI., r. 16, *ante*, pp. 180, 181. As to persons under disability, see further, O. XVI., Part III., *ante*, pp. 177—183.

*Application.*—Under Sir G. Turner's Act the application was made by *ex parte* motion: *Sidebotham v. Watson*, 1 W. R. 229; it is now usually made by summons: Dan. Forms, p. 856, n. (4). It must be supported by an affidavit, which must prove the statements in the special case affecting the person under disability. It is not sufficient to allege generally that such statements are true; their truth must be proved by some competent witness: Dan. Forms, p. 856.

*Marriage or birth of party, after setting down.*—See, as to marriage, *Johnston v. Brown*, 8 Eq. 584; *Atty v. Etough*, 13 Eq. 462; as to birth of an infant, see *Savage v. Snell*, 11 Eq. 264; *Cadman v. Cadman*, W. N. (1871), 76; *Morgan*, p. 402.

393.  
Entry for  
argument.

5. Either party may enter a special case for argument by delivering to the proper officer a memorandum of entry, in the

Form No. 25 in Appendix G, and also if any married woman, infant, or person of unsound mind not so found by inquisition be a party to the cause or matter, producing a copy of the order giving leave to enter the same for argument.

Ord. XXXIV.  
rr. 5—8.

[Cf. O.  
XXXIV. r. 5.]

For such form, see *post*, p. 595.

*Proper officer.*—See O. LXXI., r. 1, *post*, p. 514.

*Argument of special case.*—The practice in the Queen's Bench Division is for special cases to be argued before a Divisional Court. See O. LIX., r. 1 (*h*), *post*, p. 450. Only one counsel on each side will be heard.

6. The parties to a special case may, if they think fit, enter into an agreement in writing, which shall not be subject to any stamp duty, that on the judgment of the Court being given in the affirmative or negative of the questions of law raised by the special case, a sum of money, fixed by the parties, or to be ascertained by the Court, or in such manner as the Court may direct, shall be paid by one of the parties to the other of them, either with or without costs of the cause or matter; and the judgment of the Court may be entered for the sum so agreed or ascertained, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless stayed on appeal.

394.

Agreement as  
to payment of  
money and  
costs.

[Cf. O.  
XXXIV. r. 6.]

This rule in substance reproduces s. 47 of the C. L. P. Act, 1852.

*Costs.*—See Morgan and Wurtzburg, pp. 91—93; Morgan, pp. 402, 403, and cases there cited.

7. This Order shall apply to every special case stated in a cause or matter, or in any proceeding incidental thereto.

395.

Application of  
order.

*Effect of Rule.*—See the definitions of “cause” and “matter” given by S. C. Jud. Act, 1873, s. 100, *ante*, p. 63, and applied to these rules by O. LXXI., r. 1. The repealed rule only applied the Order to special cases stated in an action or proceedings incidental thereto.

By O. LVII., r. 9, *post*, p. 431, the provisions of this Order are expressly applied to interpleader proceedings, and by O. LXVIII., r. 2, *post*, p. 509, they are further expressly applied to revenue proceedings, and all civil proceedings on the Crown side of the Queen's Bench Division, including mandamus and prohibition, and also to *quo warranto*. Having regard to O. LXVIII., it seems clear, in spite of the wide definition given to the words “cause” and “matter,” that only civil, and not criminal, causes and matters are intended to come within the operation of O. XXXIV.

[Cf. O.  
XXXIV. r. 7.]

8. Any special case may hereafter be stated, for the same purposes and in the same manner as was provided by the Act 13 & 14 Vict. c. 35, and the same shall be deemed to be a special case stated in a matter within the meaning of this Order.

396.

Special case  
under 13 & 14  
Vict. c. 35.

*Effect of Rule.*—By O. XXXIV., r. 7, of the repealed Rules it was provided that “no special case shall hereafter be stated under the Act, 13 & 14 Vict. c. 35:” and by a repealing Act of 18\*1 (44 & 45 Vict. c. 59), ss. 1—18 of the 13 & 14 Vict. c. 35 (commonly known as Sir George Turner's Act) were repealed. The whole Act is now repealed by 46 & 47 Vict. c. 49. But, notwithstanding such repeal, the effect of this rule is to keep alive the provisions of Sir G. Turner's Act, so that trustees who act upon a declaration made by the Court upon a special case stated under it, are still protected by s. 15 of the Act: *Forster v. Schlesinger*, 54 L. T. 51. Having regard however to rule 7, it is conceived that



**Ord XXXIV.  
rr. 8—12.**

it was not the intention of this rule to revive the somewhat cumbrous practice under Sir G. Turner's Act. For the provisions of, and for the practice under, that Act, see Morgan, pp. 403—405.

**II.—ISSUES OF FACT WITHOUT PLEADINGS.**

397.  
Issues of fact  
without plead-  
ings.

9. When the parties to a cause or matter are agreed as to the questions of fact to be decided between them, they may, after writ issued and before judgment, by consent and order of the Court or a Judge, proceed to the trial of any such questions of fact without formal pleadings; and such questions may be stated for trial in an issue in the Form No. 15, in Appendix B, with such variations as circumstances may require, and such issue may be entered for trial and tried in the same manner as any issue joined in an ordinary action, and the proceedings shall be under the control and jurisdiction of the Court or Judge in the same way as the proceedings in an action.

This and the three following rules reproduce in substance the provisions of ss. 42—45 of the C. L. P. Act, 1852. For the form, see *post*, p. 548.

*Practice under the Rule.*—See Dan. Pr., p. 571; Dan. Forms, p. 259; Chitt. Arch., p. 1347; Chitt. Forms, pp. 686—689.

398.  
Agreement for  
payment on  
result of issue.

10. The Court or a Judge may by consent of the parties order that, upon the finding in the affirmative or negative of such issue as in the last preceding Rule mentioned, a sum of money, fixed by the parties, or to be ascertained upon a question inserted in the issue for that purpose, shall be paid by one of the parties to the other of them either with or without the costs of the cause or matter.

399.  
Judgment  
according to  
agreement.

11. Upon the finding on any such issue, as in Rule 9 mentioned, judgment may be entered for the sum so agreed or ascertained as aforesaid, with or without costs, as the case may be, and execution may issue upon such judgment forthwith, unless otherwise agreed, or unless the Court or a Judge shall otherwise order for the purpose of giving either party an opportunity for moving to set aside the finding or for a new trial.

400.  
Record of  
proceedings.

12. The proceedings upon such issue, as in Rule 9 mentioned, may be recorded at the instance of either party, and the judgment, whether actually recorded or not, shall have the same effect as any other judgment in a contested action.

**Order XXXV.  
r. 1.****ORDER XXXV.****PROCEEDINGS IN DISTRICT REGISTRIES.**

401.  
Cause or  
matter in Dis-  
trict Registry.

1. Where a cause or matter is proceeding in a District Registry, all proceedings, except where by these Rules it is otherwise provided, or the Court or a Judge shall otherwise order, shall be taken



in the District Registry, down to and including the entry of final judgment, and every final judgment and every order for an account, by reason of the default of the defendant, or by consent, shall be entered in the District Registry in the proper book, in the same manner as a like judgment or order in an action proceeding in London would be entered in the Central Office.

Order XXXV.  
rr. 1, 2.

[Cf. O.  
XXXV. r. 1a.]

*Establishment of District Registries.*—See S. C. Jud. Act, 1873, s. 60, amended by S. C. Jud. Act, 1875, s. 13. See further, S. C. Jud. Act, 1873, as to seals of District Registrars (s. 61); as to their powers (s. 62); as to proceedings to be taken in District Registries (s. 64); as to referring accounts and inquiries to be taken in the Registries (s. 66); and see *ante*, pp. 48, 49. As to appointment of deputies by District Registrars, see App. Jur. Act, 1876, s. 22, *ante*, p. 91. As to districts of District Registrars, see Order in Council, 12th August, 1875, *post*, p. 799.

*Proceedings in Registry.*—As to when an action is to proceed in the District Registry, see O. V., r. 2, *ante*, p. 136, and notes thereto, and O. XII., *ante*, p. 157, where see also as to the issue of writs and the entry of appearances in District Registries.

*Taxation of costs.*—As to taxing costs of proceedings in District Registries, see O. LXV., r. 27 (43), *post*, p. 500; *Day v. Whittaker*, 6 Ch. D. 734; and *Wilson v. Altree*, 27 Ch. D. 242.

*Powers of District Registrar.*—A District Registrar has no power to make an order for administration: *Irlam v. Irlam*, 2 Ch. D. 608; nor can he appoint a receiver, or direct a banking account to be opened: *Hutchinson v. Ward*, 6 Ch. D. 692. It was decided in the case of *Re Bowen*, 20 Ch. D. 538, that a District Registrar could make an order for an account in an administration action, under O. XV., r. 1; and if the order so directs (but not otherwise) he can take the account himself. But see r. 6, *infra*, under which a District Registrar is precluded from exercising jurisdiction in such matters as are not within the jurisdiction of a Chief Clerk. By O. LV., r. 15, *post*, p. 409, an order for accounts or inquiries relating to the estate of a deceased person, or to the administration of a trust, must now be made by a Judge in person. It would seem, therefore, that *Re Bowen* can no longer be relied on as an authority.

*Receiver's accounts.*—Where an action is commenced in a District Registry, and a receiver is appointed by a Judge in London, the receiver may be ordered to pass his accounts in the District Registry: *Robertson v. Capper*, 26 W. R. 434.

*Partition action.*—In a partition action the usual inquiries may be made in the District Registry, but application for a sale must be made in London: *Sykes v. Schofield*, 14 Ch. D. 629.

*Order made by Judge.*—As to the effect of an order made by a Judge in an action commenced in a District Registry in removing such action, see *Dyson v. Pickles*, 27 W. R. 376.

*Discretion.*—It is in the discretion of the Court to direct a sale of land to take place in the District Registry or in London, and the Court of Appeal will not review that discretion: *Macdonald v. Foster*, 6 Ch. D. 193.

*Funds in Court.*—The Supreme Court Funds Rules, 1886, do not apply in District Registries to funds in Court: Rule 111, *post*, p. 757; but see now, as to the Liverpool and Manchester District Registries, S. C. (District Registry) Funds Rules, 1887, *post*, p. 771.

2. Where the writ of summons issues out of a District Registry, and the plaintiff is entitled to enter interlocutory judgment under any of the Rules of Order XIII., or where the cause or matter is proceeding in the District Registry and the plaintiff is entitled to enter interlocutory judgment under any of the Rules of Order XXVII., in either case such interlocutory judgment, and when damages shall have been assessed, final judgment, shall be entered in the District Registry, unless the Court or Judge shall otherwise order.

402.

Judgment in  
District  
Registry.

[Cf. O.  
XXXV. r. 1a.]

Order XXXV.  
rr. 3—6a.

403.

Judgment in  
Central Office.

[Cf. O.  
XXXV. r. 2.]

404.

Writ of exe-  
cution and  
taxation of  
costs.

[Cf. O.  
XXXV. r. 3.]

3. Where a cause or matter is proceeding in a District Registry, and the judgment or any other order therein is directed to be entered in the Central Office, the same shall be so entered, and an office copy of every such judgment or order shall be transmitted to the District Registry to be filed with the proceedings in the action.

4. Where a cause or matter is proceeding in a District Registry all writs of execution for enforcing any judgment or order therein, and all summonses under the Debtors Act, 1869, shall issue from the District Registry, unless the Court or a Judge shall otherwise direct. Where final judgment is entered in the District Registry, costs shall be taxed in such Registry unless the Court or a Judge shall otherwise order.

The provision in this rule as to summonses under the Debtors Act was introduced in 1883. See further as to these summonses, O. LIV., r. 19, *post*, p. 398. Since the 1st January, 1884, these summonses have been bankruptcy business, and have been dealt with by the Bankruptcy Courts.

*Taxation of costs.*—Costs will not, except under special circumstances, be ordered to be taxed in the District Registry: *Day v. Whittaker*, 6 Ch. D. 734; *Wilson v. Alltree*, 27 Ch. D. 242. But when the Court, in the exercise of its discretion, has directed taxation in the District Registry, the paymaster is bound to act on the District Registrar's certificate: *Wilson v. Alltree*, 27 Ch. D. 242. As to fees, &c., on taxation, see O. LXV., r. 27 (43), *post*, p. 500.

405.

Proceedings  
necessary or  
incidental to  
judgment.

[Cf. O.  
XXXV. r. 3a.]

5. Where a cause or matter is proceeding in a District Registry all proceedings relating to the following matters, namely,—

- (a.) Leave to enter judgments under Order XVI., Rules 50 and 51;
- (b.) Leave to issue or renew writs of execution;
- (c.) Examination of judgment debtors for garnishee purposes, or under Order XLII., Rule 32;
- (d.) Garnishee orders;
- (e.) Charging orders *nisi*;

shall, unless the Court or a Judge shall otherwise order, be taken in the District Registry.

The provisions in this rule as to judgment against a third party under the third party procedure were introduced in 1883.

406.

Powers of  
District  
Registrar.

[Cf. O.  
XXXV. r. 8.]

6. Where a cause or matter is proceeding in a District Registry the District Registrar may exercise all such authority and jurisdiction in respect thereof as may be exercised by a Judge at Chambers, except such as by these Rules a Master or Chief Clerk is precluded from exercising.

The words "or chief clerk" were added by R. S. C., Dec., 1885, r. 10.

As to the jurisdiction of a master, see O. LIV., r. 12, *post*, p. 396. As to the jurisdiction of a chief clerk, see O. LV., r. 15, *post*, p. 409.

Duties of  
District  
Registrars of  
Liverpool and  
Manchester.

6a. Where a cause or matter hereafter commenced in the Chancery Division is proceeding in the District Registry of Liverpool or in the District Registry of Manchester, the District Registrar shall act in respect thereof, and throughout all the proceedings therein, as a Chief Clerk of the Judge of the Chancery Division to whom the cause or matter is assigned, and as Registrar and Taxing Master



according to directions to be given from time to time by such Judge: Provided that no order for the payment of money out of Court for an amount exceeding 50*l.* shall be made in any such cause or matter, except by the Judge in person: and provided also that no District Registrar who is a practising solicitor shall tax the costs in any such cause or matter.

This rule is r. 2 of R. S. C., Dec. 1886. It came into operation on Jan. 1, 1887.

For the directions issued by Kekewich, J., to the District Registrars of Liverpool and Manchester, see *post*, p. 784.

7. Every application to a District Registrar shall be made in the same manner in which applications at Chambers are directed to be made by these Rules.

See O. LIV., *post*, p. 394.

8. If any matter appears to the District Registrar proper for the decision of a Judge, the Registrar may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the Registrar with such directions as he may think fit.

Compare O. LIV., rr. 20—22, *post*, p. 398, with this and the two following rules.

9. Any person affected by any order, finding, or decision of a District Registrar may appeal to a Judge. Such appeal may be made notwithstanding that the order or decision was in respect of a proceeding or matter as to which the District Registrar had jurisdiction only by consent. Such appeal shall be by way of indorsement on the summons by the Registrar at the request of any party, or by notice in writing to attend before the Judge without a fresh summons within *six days* after the party complaining has notice of the order, finding or decision complained of, or such further time as may be allowed by a Judge or the Registrar.

*Effect of Rule.*—Under the corresponding repealed rule the appeal was by summons within *four days*. The present rule substitutes an appeal by indorsement, without a fresh summons, within *six days*. Compare O. LIV., r. 21, *post*, p. 398, as to appeals from Masters.

*Notice of appeal.*—A notice of appeal signed by a country solicitor is a good notice: *Mayor, &c. of Rotherham v. Peace*, W. N. (1883), 216. The appealing party has the right to have the summons indorsed by the Registrar if he desires it: *Danger v. Nelson*, W. N. (1884), 96.

10. An appeal from a District Registrar shall be no stay of proceedings unless so ordered by a Judge or the Registrar.

11. Every District Registrar and other officer of a District Registry shall be subject to the orders and directions of the Court or a Judge, as fully as any other officer of the Court, and every proceeding in a District Registry shall be subject to the control of the Court or a Judge, as fully as a like proceeding in London.

12. Every reference to a Judge by or appeal to a Judge from a District Registrar in any cause or matter in the Chancery Division shall be to the Judge to whom the cause or matter is assigned.

Provided that in any cause or matter proceeding in the District Registry of Liverpool or the District Registry of Manchester, such

Order XXXV.  
rr. 6a—12.

407.  
Mode of appli-  
cation.  
[Cf. O.  
XXXV. r. 5.]

408.  
Reference to  
a Judge.  
[O. XXXV.  
r. 6.]

409.  
Appeal to  
Judge.  
[Cf. O.  
XXXV. r. 7.]

410.  
Appeal no  
stay.  
[O. XXXV.  
r. 8.]

411.  
Control of  
Court or Judge  
over District  
Registrar.  
[O. XXXV.  
r. 9.]

412.  
To what  
Judge.  
[Cf. O.  
XXXV. r. 10.]



**Order XXXV. rr. 12—15.** reference or appeal may be to any Judge for the time being sitting either at Liverpool or Manchester.

District  
Registries of  
Liverpool or  
Manchester.

413.

Removal of  
action by  
defendant or  
intervener.

[O. XXXV.  
r. 11, and r.  
11 (a).]

<sup>1</sup> *Sic.*

Specially indorsed writ.

Admiralty  
action *in rem*.

The proviso to this rule was added by R. S. C., Dec., 1886, r. 3.

**13.** In any action which would, under the foregoing Rules, proceed in the District Registry, the action may, subject to Rule 14, be removed from the District Registry as of right in the cases, and within the times following:—

(1.) Where the writ is specially indorsed under Order III., Rule 6, and the plaintiff does not within *four days* after the appearance of <sup>1</sup> such defendant give notice of an application for an order against him under Order XIV.; then such defendant may remove the action as of right at any time after the expiration of such four days, and before delivering a defence, and before the expiration of the time for doing so:

(2.) Where the writ is specially indorsed and the plaintiff has made such application as in the last paragraph mentioned, and the defendant has obtained leave to defend in manner provided by Order XIV.; then such defendant may remove the action as of right at any time after the order giving him leave to defend, and before delivering a defence and before the expiration of the time for doing so:

(3.) Where the writ is not specially indorsed under Order III., Rule 6, any defendant may remove the action as of right at any time after appearance, and before delivering a defence, and before the expiration of the time for doing so:

(4.) In an Admiralty action *in rem*, any person who may have duly intervened and appeared may remove an action from a District Registry as of right.

This, and the two succeeding rules, deal with removal from a District Registry as of right on the application of any defendant. Rule 16 deals with removal by leave on the application of any party.

414.  
Mode of  
removal.  
[O. XXXV.  
r. 12.]

**14.** Any party or person desirous to remove an action as of right under the last preceding Rule may do so by serving upon the other parties to the action, and delivering to the District Registrar, a notice, signed by himself or his solicitor, to the effect that he desires the action to be removed to London, and the action shall be removed accordingly: Provided, that if the Court or a Judge shall be satisfied that the defendant giving such notice is a merely formal defendant, or has no substantial cause to interfere in the conduct of the action, or that there is other good cause for proceeding in the District Registry, such Court or Judge may order that the action may proceed in the District Registry notwithstanding such notice.

“*Good cause.*”—For a case in which under this rule the Court ordered an action to proceed in a District Registry, see *Smith v. Bell*, W. N. (1883), 196. For a case in which the Court refused to make such order, see *Walker v. Crabtree*, W. N. (1883), 197.

415.  
Certificate on  
removal.

**15.** Except in Admiralty actions *in rem*, the notice for removal shall be accompanied by a certificate signed by the defendant or his solicitor that his defence has not been delivered, and that the time for delivering the same has not expired.

This rule was introduced in 1883.

16. In any case not provided for by Rules 13 and 14, any party to a cause or matter proceeding in a District Registry may apply to the Court or a Judge, or to the District Registrar, for an order to remove the cause or matter from the District Registry to London, and the Court, Judge, or Registrar may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall be just.

*Effect of Rule.*—The power to remove as of right given by rule 13 is limited to defendants, and can only be exercised within the periods prescribed. The power given by this rule to apply for an order of removal is general. See, as to the power of removal, S. C. Jud. Act, 1873, s. 65, *ante*, p. 49. For a case under this rule, see *Re Ebersley's Hotel Co.*, W. N. (1884), 252. "The power ought to be freely exercised in two cases: first, where the Court has reason for supposing that persons who would not otherwise be litigating in the District Registry have availed themselves of the new practice for taking to the District Registry business which ought not to be there: and, secondly, where the balance of convenience is in favour of the transfer being made:" *Re Neath and Bristol Steamship Co.*, 58 L. T. 180, per Kekewich, J.

17. Any party to a cause or matter proceeding in London may apply to the Court or a Judge for an order to remove the cause or matter from London to any District Registry, and the Court or Judge may make an order accordingly, if satisfied that there is sufficient reason for doing so, upon such terms, if any, as shall be just.

18. Where, under the preceding Rules of this Order, a cause or matter is removed from a District Registry, the defendant shall, upon such removal, give notice to the plaintiff of an address for service in London, in all respects as if the appearance had been originally entered in London.

This rule was introduced in 1883, and supplied an omission in the repealed rules.

*Defendant's address for service.*—See O. XII., rr. 10, 11, *ante*, p. 158.

19. Where a cause or matter is proceeding in a District Registry, all pleadings and other documents required to be filed shall be filed in the District Registry.

20. Whenever a defendant appears in London to a writ issued out of a District Registry, or any proceedings are removed from the District Registry to London, by notice under Rule 14 of this Order, or by order of the Court or a Judge, the District Registrar shall transmit to the Central Office all original documents (if any) filed in the District Registry, and a copy of all entries of the proceedings in the books of the District Registry.

21. When a cause or matter in the Chancery Division is proceeding in a District Registry, all certificates of the Chief Clerk and taxing officers and other documents (required to be filed) used in London before the Judge in Chambers, or before any taxing officer or referee, and not already filed in the District Registry, shall be filed in the same office as they would have been filed in if the proceedings had originally commenced in London; and if the Court or Judge shall so direct, office copies thereof shall be transmitted to the District Registry.

Order XXXV.  
rr. 16—21.

416.

Removal by  
any party to  
London.

[O. XXXV.  
r. 13.]

417.

Removal by  
any party to  
District  
Registry.

[O. XXXV.  
r. 13.]

418.

New address  
for service.

419.

Filing in  
District  
Registry.

420.

Transmission  
of documents  
on removal.

[Cf. O.  
XXXV. r. 14.]

421.

Filing of chief  
clerk's certifi-  
cates, &c.



Order XXXV.  
rr. 22—24.

422.

Removal of  
documents  
from District  
Registry.

423.

District  
Registrars  
to account.

[O. XXXV.  
r. 15.]

424.

Forms in  
District  
Registries.

22. No affidavit or record of the Court shall be taken out of a District Registry (except upon removal of the proceedings to London) without the order of a Judge or of the District Registrar, and no *subpœna* for the production of any such document shall be issued.

23. Every District Registrar shall account for and pay over to the Treasury all moneys paid into Court at the Registry of which he is Registrar, in such manner and at such times as may be from time to time directed by the Treasury.

Where in an action commenced in a District Registry money is ordered to be paid by a receiver into Court to the credit of the action, it is not a compliance with that order to pay the money into a bank "to the credit of the District Registrar": *Finlay v. Davis*, 12 Ch. D. 735.

24. The forms contained in the Appendices shall, as far as they are applicable, be used in or for the purposes of District Registries, with such variations as circumstances require.

Ord. XXXVI.  
r. 1.

## ORDER XXXVI.

### TRIAL.

#### I. Place.

425.

Local venue  
abolished.

[Cf. O.  
XXXVI. r. 1.]  
Place of trial.

1. There shall be no local venue for the trial of any action, except where otherwise provided by Statute. Every action in every Division shall, unless the Court or a Judge otherwise orders, be tried in the county or place named on the statement of claim, or (where no statement of claim has been delivered or required) by a notice in writing to be served on the defendant, or his solicitor, within *six days* after appearance. Where no place of trial is named, the place of trial shall, unless the Court or a Judge shall otherwise order, be the county of Middlesex.

*Effect of Rule.*—By the corresponding repealed rule of 1875 it was provided simply that "there shall be no local venue for the trial of any action." The present rule adds the qualification "except where otherwise provided by statute." But by s. 6 of the Statute Law Revision and Civil Procedure Act, 1883, it is enacted that, "No enactment repealed by virtue of s. 33 of the Judicature Act, 1875, shall be revived by reason of the annulment or alteration by any new Rules of Court of the rules contained in the first schedule to that Act." By s. 33 of the Act of 1875, all enactments inconsistent with that Act were repealed. The result appears to be that all enactments relating to local venue prior to the 1st of November, 1875, are repealed, and the savings will only operate as regards statutes subsequent to that date.

*County of Middlesex.*—With reference to the provision that unless another place of trial is named, the place of trial for every action is the county of Middlesex, the Local Government Act, 1888 (51 & 52 Vict. c. 41), which establishes the county of London, provides (s. 89 (3)) as follows:—

"Subject to rules of Court made by the authority having power to make rules of Court for the Supreme Court of Judicature, the county of London and the county of Middlesex shall be deemed to be one county for the purpose of all legal proceedings, civil or criminal, in the Supreme Court or Central Criminal Court, or any other Court except the Court of Quarter Sessions, and also for the purpose of the sittings of the Supreme Court, Central Criminal Court, or such other Court as aforesaid, or of any Judge of any of such Courts, and also for the purpose of any jury, and of any Court of assize, oyer and terminer, and gaol delivery; and all enactments, rules, orders, and documents referring to Middlesex shall be construed so as to give effect to this section; and rules of Court may be from time to time made for the purpose of carrying this section into effect, and for regulating the issue of precepts to the sheriffs of London and Middlesex for the return of



jurors, and the jurors so returned shall have the same powers, duties, and liabilities as if the two counties were one county."

Ord. XXXVI.  
rr. 1, 2.

*Actions in Chancery Division.*—This rule applies to actions which have been specially assigned to the Chancery Division, and which have been commenced in that Division: *Philips v. Beale*, 26 Ch. D. 621; and see next rule.

*Place of trial.*—As regards naming the place of trial, this rule makes provision for the case where there is no statement of claim. As to this, see O. XX., r. 1, *ante*, p. 214. Where the writ is specially indorsed under O. III., r. 6, the place of trial must be indorsed on the writ: O. XX., r. 5, *ante*, p. 216, and App. A., pt. I., No. 2, *post*, p. 521. If the plaintiff omits to name the place of trial in his statement of claim, he cannot name it in an amended statement of claim; and if he has named a place of trial in the original statement of claim, he cannot alter it in an amended statement of claim: *Locke v. White*, 33 Ch. D. 308.

*Change of venue.*—Subject to statutory provision to the contrary, the power to change the place of trial is by this rule left to the discretion of the Judge: see *Green v. Bennett*, 32 W. R. 848. In an action brought to set aside deeds on the ground of fraud, the plaintiff named Cardigan as the place of trial. On motion by the defendant the Court ordered the action to be tried in the Chancery Division in London without a jury: *Powell v. Cobb*, 29 Ch. D. 486. See also *Cardinall v. Cardinall*, 25 Ch. D. 772; *Old Mill Co. v. Dukinfield Local Board*, 51 L. T. 414. The Court will not change a venue laid by a plaintiff, unless a defendant can show some serious injury and injustice to his case by trying it at that venue: *Shroder v. Myers*, 34 W. R. 261.

*Application.*—If a summons for directions is issued the application may be included in such summons: O. XXX., r. 1, *ante*, p. 249. For form of notice of motion or summons, see Dan. Forms, p. 324. The application should not be made until after close of pleadings: Dan. Pr. p. 669; Dan. Forms, p. 324, n. (d). See also Chit. Arch., pp. 589—593; Chit. Forms, pp. 343—345.

1A. The provisions of Order XXXVI., Rule 1, shall apply to every action, notwithstanding that it may have been assigned to any Judge.

*Effect of Rule.*—This rule was introduced in October, 1884. Its effect, taken in conjunction with rule 1, is that a plaintiff in a Chancery action has the right to have it tried at a place on one of the circuits (*e.g.* Manchester) notwithstanding that the action is assigned to a particular Chancery Judge. See rule 22c, which provides for special sittings being held for the trial of Chancery actions at Liverpool and Manchester.

## II. Mode of Trial.

2. In actions of slander, libel, false imprisonment, malicious prosecution, seduction, or breach of promise of marriage, the plaintiff may, in his notice of trial to be given as hereinafter provided, and the defendant may, upon giving notice within *four days* from the time of the service of notice of trial, or within such extended time as the Court or a Judge may allow, or in the notice of trial to be given by him as hereinafter provided, signify his desire to have the issues of fact tried by a Judge with a jury, and thereupon the same shall be so tried.

426.  
Trial with jury  
as of right in  
certain actions.

**EFFECT OF RULES AS TO TRIAL WITH JURY.**—This and the seven succeeding rules regulate the mode of trial of causes in the High Court. Under the repealed rules regulating the mode of trial, subject to the power of compulsory reference, either party had an absolute right to have the issues of fact tried by a jury in any action in the nature of a common law action: *Sugg v. Silber*, 1 Q. B. D. 362. In any action which before the Judicature Acts could have been properly brought only in the Court of Chancery, it was held to be in the discretion of the Court to allow a trial by jury or not: *Ruston v. Tobin*, 10 Ch. D. 558. Under the new rules the normal mode of trial is by a Judge alone without a jury.

In cases assigned by s. 34 of S. C. Jud. Act, 1873, to the Chancery Division, no deviation from the normal rule will, except under special circumstances, be allowed. In other cases the rule is subject to the following qualifications:—

1. In the cases specified in rule 2, *e.g.*, libel, breach of promise, &c., either party without any order may have a jury.

Ord. XXXVI.  
rr. 2—4.

2. In all other cases an order for a jury is necessary. In the cases contemplated by rules 4 and 5, that is, actions which previously to the passing of S. C. Jud. Act, 1873, could, without any consent of the parties, have been tried without a jury, or actions involving prolonged or scientific investigations, the Court may, in its discretion, under rules 4 and 7 (a), allow or refuse a jury, when applied for. In any case outside rules 4 and 5, a jury if applied for must be granted. See, as to the effect of the rules, *The Temple Bar*, 11 P. D. 6; *Coote v. Ingram*, 35 Ch. D. 117; *Timson v. Wilson*; *Fanshawe v. London and Provincial Dairy Co.* "Rules 2—7 form a group of regulations hanging together and requiring to be read together. They form a new set of regulations as to trial by jury, and we should only be misled if we were to go back to decisions on the Orders of 1875. O. XXXVI., r. 4, may be in the same terms as R. S. C. 1875, O. XXXVI., r. 26, but the rules before it, in connection with which it must be read, have been recast, and its effect is thereby varied. Every party who before November, 1883, was entitled to trial by jury is so entitled still, and no party who before November, 1883, was not entitled to trial by jury is so entitled now. But there are cases in which the Court can order a trial by jury where without such an order the trial would be without a jury, and so there are cases in which the Court can order a trial without a jury where without such an order the trial would be with a jury. The law in this respect was not new, for the Court of Chancery could direct an issue, which led to the insertion of the last words in rule 3, and rule 4, and the Courts of Common Law had the powers now conferred by rule 5. Rule 4 is confined to causes which under the old law would be tried without a jury without any consent, and it applies to Admiralty and Chancery actions. The effect of the Rules of 1883 was to make trial without a jury the normal mode of trial except where trial by jury is ordered under rr. 3, 6, or 7 (a), or may be had without an order under r. 2. Rule 6 gives no right to trial by jury in any case which before could be tried without a jury, without any consent of parties. The actions now before us are actions for nuisance in the Chancery Division. These, before the Jud. Acts, would be tried by the Judge without a jury, unless he saw fit to direct them to be tried with a jury. They come within r. 7 (a), and the trial without a jury being the normal mode of trial, those who ask for a jury must satisfy the Court that it is better for the action to be tried with a jury": per Lindley, L. J., *Timson v. Wilson*; *Fanshawe v. London and Provincial Dairy Co.*, 38 Ch. D. 72, at pp. 76, 77.

427.  
Chancery  
causes to be  
tried without  
jury.

3. Causes or matters assigned by the Principal Act to the Chancery Division shall be tried by a Judge without a jury, unless the Court or a Judge shall otherwise order.

For the causes or matters referred to, see S. C. Jud. Act, 1873, s. 34, *ante*, p. 33.

*Cases.*—The Court will not order a trial by jury unless a simple issue of fact is involved, the determination of which will decide the action: *Cardinall v. Cardinall*, 25 Ch. D. 772. In an action to set aside an agreement on the ground of fraud and for accounts, an application to send an issue for trial with a jury was refused: *Moss v. Bradburn*, 32 W. R. 368.

A defendant has no right to say he would split the action in two and insist on one portion being tried with a jury: *Sheppard v. Gilmore*, 53 L. T. 625; see also *Gardner v. Jay*, 29 Ch. D. 60. An application to try by jury was refused where the defendants alleged, and plaintiff did not deny, that there was a local prejudice against one of the defendants, which would endanger his obtaining a fair trial: *Shafte v. Bolekow, Vaughan & Co.* (No. 2), 35 W. R. 686.

428.  
Power to direct  
trial without  
jury in cases  
where power  
existed before.

4. The Court or a Judge may, if it shall appear desirable, direct a trial without a jury of any question or issue of fact, or partly of fact and partly of law, arising in any cause or matter which previously to the passing of the Principal Act could, without any consent of parties, have been tried without a jury.

[O. XXXVI.  
r. 26.]

**DISCRETION.**—On the identical words of the repealed O. XXXVI., r. 26, it was held that in any action which would before the Acts have been properly brought



only in the Court of Chancery, and in which no party would have had an absolute right to a jury, it was in the discretion of the Court to order a trial by jury or not; and the Court of Appeal, as a rule, would not interfere with the discretion of the Court below: *Swindell v. Birmingham Syndicate*, 3 Ch. D. 127; *Ruston v. Tobin*, 10 Ch. D. 558; see also *Clarke v. Cookson*, 2 Ch. D. 746; *West v. White*, 4 Ch. D. 631; *Bordier v. Burrell*, 5 Ch. D. 512; *Sykes v. Firth*, 46 L. J., Ch. 627; *Garling v. Royds*, 25 W. R. 123. As to the principle on which this discretion should be exercised, see per Jessel, M. R., in *Bordier v. Burrell*, *ubi supra*; *Clements v. Norris*, 26 W. R. 94; *Powell v. Williams*, 12 Ch. D. 234.

*Several defendants.*—Where there were several defendants, it was held that one alone could not insist on a jury trial if the others did not also desire it: *Mirehouse v. Barnett*, 47 L. J., Ch. 689; *Back v. Hay*, 5 Ch. D. 235.

*Cases in which a jury refused.*—In the following cases applications for a jury were refused, namely: in an action to restrain a nuisance when the parties had agreed that the evidence should be taken by affidavit: *Brooke v. Wigg*, 8 Ch. D. 510; see too *Dent v. Sovereign Life Ass. Co.*, 27 W. R. 379; in an action to restrain the use of a trade name for a machine and for the infringement of a trade mark: *Singer Manufacturing Co. v. Loog*, 11 Ch. D. 656; see too *Spratt's Patent v. Ward & Co.*, 11 Ch. D. 240; in an action to set aside an agreement which the plaintiff had been induced to enter into by the fraudulent representations of the defendant: *Ruston v. Tobin*, 10 Ch. D. 558; see too *Back v. Hay*, 5 Ch. D. 235; and *Moss v. Bradburn*, 32 W. R. 368; in an action to enforce specific performance of a contract: *Pilley v. Baylis*, 5 Ch. D. 241; *Usil v. Whelpton*, 29 W. R. 799; in an action involving title to land and a right of way where the evidence consisted chiefly of conveyances, photographs, and plans: *Wodderburne v. Pickering*, 13 Ch. D. 769; and in an action to restrain the publication of a trade libel: *Thomas v. Williams*, 14 Ch. D. 864.

Where matters specially assigned to the Chancery Division were joined in one action with matters not so assigned, the Court refused an application for a jury: *Gardner v. Jay*, 29 Ch. D. 50; *Sheppard v. Gilmore*, 53 L. T. 625. Where plaintiff sued for redemption, and defendant counter-claimed for damages for fraudulent misrepresentation, an application by plaintiff for a jury was refused: *Lynch v. Macdonald*, 37 Ch. D. 227. As to an Admiralty action *in rem*, see *The Temple Bar*, 11 P. D. 6.

5. The Court or a Judge may direct the trial without a jury of any cause, matter or issue requiring any prolonged examination of documents or accounts, or any scientific or local investigation, which cannot in their or his opinion conveniently be made with a jury.

429.

Trial without jury in cases of accounts, &c.

The words of this rule follow the words of S. C. Jud. Act, 1873, s. 57, which gives the Court power to refer compulsorily to an official or special referee.

Application to try by a jury was refused in a case where a custom had to be proved by examination of ancient documents of a peculiar character: *Shafto v. Bolekov, Vaughan & Co.* (No. 2), 35 W. R. 686.

6. In any other cause or matter, upon the application within ten days after notice of trial has been given of any party thereto for a trial with a jury of the cause or matter or any issue of fact, an order shall be made for a trial with a jury.

430.

Order for jury in other cases.

The words limiting the time for the application were inserted by rule 11 of R. S. C., Dec. 1885: see *Moore v. Deakin*, 34 W. R. 227.

**MEANING AND EFFECT OF RULE.**—Causes or matters which previously to the passing of the S. C. Jud. Act, 1873, could, without any consent of parties, have been tried without a jury, are excluded from the operation of this rule, and the parties are therefore not entitled, as of right, to a trial with a jury. In such causes or matters an application for a trial with a jury must be made under r. 7, *infra*, in which case it is in the discretion of the Court or Judge to grant the application: *The Temple Bar*, 11 P. D. 6. The general effect of rr. 4, 6 and 7 (*a*), is to preserve to a suitor the right to a jury where the right existed prior to the Act, and to confer a discretion on the Court where the right did not previously exist. This rule constitutes an exception to the provision in r. 7 (*a*).



**Ord. XXXVI.** The words "in any other cause or matter" refer to causes or matters specified in r. 4. Where, therefore, an action could prior to the Act have been tried by a Judge without a jury without consent, the parties cannot demand a jury as of right. There is a discretion under rr. 4 and 7 (a) combined, to direct a trial without a jury in cases in which the parties previously had no such right: *Coote v. Ingram*, 35 Ch. D. 117; see also *Timson v. Wilson*; *Fanshawe v. London and Provincial Dairy Co.*, 38 Ch. D. 72; but see *contrà*, *Fennessy v. Rabbitts*, 56 L. T. 138. Where the plaintiff brought an action for redemption, and the defendant by his counter-claim sought relief incident to his position as mortgagee, and also damages for fraudulent misrepresentation, it was held that the plaintiff had no right to have the action tried by a jury, but that his proper course would have been to have applied to have the counter-claim tried separately: *Lynch v. Macdonald*, 37 Ch. D. 227. "The rule does not say that any issue of fact which, if it stood alone, must be tried by a jury, shall be so tried, but that 'in any other cause or matter,' which excludes actions in the Chancery Division, an order shall be made for a trial with a jury." *S. C.*, per Cotton, L. J., at p. 233.

*Order for jury is of right in a proper case.*—In a case within this rule there is no discretion to refuse an order: *Trower v. Law Life Assurance Society*, 33 W. R. 647; see also *Old Mills Co. v. Dukinfield Local Board*, 51 L. T. 414. An action proper to be tried with a jury will be ordered to be so tried, notwithstanding it has been commenced in the Chancery Division: *Coles v. C. S. S. Association*, 32 W. R. 407.

*Transfer to Queen's Bench Division.*—A Chancery action ordered to be tried with a jury will, as a rule, be transferred: *Re Martin*, *Hunt v. Chambers*, 20 Ch. D. 365.

*Time for making application.*—Where notice of trial became no longer in force under rule 16, *infra*, and a second notice of trial was given, and within ten days an application for a jury was made, such application was held to be too late under this rule: *Tonsley v. Heffer*, 19 Q. B. D. 153.

431.  
Mode of trial  
to be without  
jury.

**7.—(a.)** In every cause or matter, unless under the provisions of Rule 6 of this Order a trial with a jury is ordered, or under Rule 2 of this Order either party has signified a desire to have a trial with a jury, the mode of trial shall be by a Judge without a jury; provided that in any such case the Court or a Judge may at any time order any cause, matter, or issue to be tried by a Judge with a jury, or by a Judge sitting with assessors, or by an Official Referee or special referee with or without assessors:

As to this rule, see *Coote v. Ingram*, 35 Ch. D. 117, and note to r. 6.

Other modes  
of trial.  
[Cf. O.  
XXXVI. rr. 2  
and 27.]

Special jury  
at plaintiff's  
instance.

Special jury  
at defendant's  
instance.

Order for  
special jury.

(b.) The plaintiff in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury, upon giving notice in writing to that effect to the defendant at the time when he gives notice of trial:

(c.) The defendant in any cause or matter in which he is entitled to a jury, may have the issues tried by a special jury, on giving notice in writing to that effect at any time after the close of the pleadings or settlement of the issues and before notice of trial, or if notice of trial has been given, then not less than *six clear days* before the day for which notice of trial has been given:

(d.) Provided that a Judge may at any time make an order for a special jury upon such terms, if any, as to costs and otherwise as may be just.

*Special jury.*—Clauses (b), (c) and (d), relating to special juries, reproduce in substance the provisions of s. 109 of the C. L. P. Act, 1852.

*Trial by Judge without a jury.*—As to the power to hear a matter *in camera*, see Dan. Pr., p. 709, and cases there cited: *Mellor v. Thompson*, 31 Ch. D. 55.

*Special referee.*—The Court has no power to refer a cause or matter to a special referee without the consent of the parties. Where one of the parties objected to a reference to a special referee, it was held that the Judge had jurisdiction to order the cause to be tried by an official referee, and that the extra costs occasioned by a trial before an official referee instead of a special referee should be reserved: *London Fire Insurance Co. v. British-American Association*, 54 L. J., Q. B. 302.

As to trials before referees, see rr. 45—55, *infra*; as to assessors, see r. 43, *infra*.

8. Subject to the provisions of the preceding Rules of this Order, the Court or a Judge may, in any cause or matter, at any time or from time to time, order that different questions of fact arising therein be tried by different modes of trial, or that one or more questions of fact be tried before the others, and may appoint the places for such trials, and in all cases may order that one or more issues of fact be tried before any other or others.

As to ordering a question of law to be argued before trying the facts, see O. XXV., r. 2, *ante*, p. 232.

*Cases.*—On the identical words of the repealed rule, O. XXXVI., r. 6, it was held that one issue of fact would only be ordered to be tried before the others in very exceptional cases: *Piercy v. Young*, 15 Ch. D. 475. See the principle explained by Jessel, M. R., *ibid.*, at p. 479; and for examples, see *Emma Silver Mining Co. v. Grant*, 11 Ch. D. 918; *Tasmanian Main Line Co. v. Clark*, 27 W. R. 677; and *Thompson v. Woodfine*, 26 W. R. 678. Where liability and also the amount of damages are disputed in an action, and the question as to the amount of damages is one of such detail or nature that it probably will be referred to some other tribunal than a jury, it is a proper exercise of discretion under this rule to order the question of liability to be tried, and the question of damages to be postponed until afterwards: *Smith v. Hargrove*, 16 Q. B. D. 183.

9. Every trial of any question or issue of fact with a jury shall be by a single Judge, unless such trial be specially ordered to be by two or more Judges.

*Where tried.*—Such trials must take place either at the sittings held for London or Middlesex jury trials under S. C. Jud. Act, 1873, s. 30, *ante*, p. 31, or at the assizes: *Warner v. Murdoch*, 4 Ch. D. 750.

*Trial at bar.*—This is not abolished by the Judicature Acts: *Dixon v. Farrer*, 56 L. J., Q. B. 53.

*Distinct issues.*—Where there are distinct issues, involving separate causes of action, submitted to a jury, and they agree on some but cannot agree on the rest, the Judge may take their findings on the issues as to which they are agreed and discharge them as to the rest, and enter judgment accordingly: *Marsh v. Isaacs*, 45 L. J., C. P. 505.

10. Nothing in this Order shall affect any proceedings under any of the provisions of the Common Law Procedure Acts relating to arbitration.

**ARBITRATION.**—As the law at present stands, references to arbitration may be divided into two classes:—

(1) References as they existed before the Judicature Acts; and (2) References under the Judicature Acts. The Judicature Acts in no way altered the then existing law of references, but merely provided two fresh forms of reference: see *Cruickshank v. The Floating Baths Co.*, 1 C. P. D. 260.

*References under former practice.*—Apart from references to arbitration regulated by particular statutes, such as arbitrations under the Lands Clauses Act, 1845, or the Public Health Act, 1875, references under the system before the Judicature Acts may be divided into (a) references by consent; and (b) compulsory references. References by consent where no action is pending between the

Ord. XXXVI.  
rr. 7—10.

432.  
Trial of questions at different times and places and in different ways.  
[O. XXXVI.  
r. 6.]

433.  
Trial before single Judge.  
[O. XXXVI.  
r. 7.]

434.  
Proviso as to arbitrations.



**Ord. XXXVI.** parties are regulated by 9 Will. III. c. 15, as amended by 3 & 4 Will. IV. c. 42, and the Common Law Procedure Act, 1854 (17 & 18 Vict. c. 125), ss. 10—17. The provisions of the two former statutes apply only to references by consent in an action. Compulsory references were first introduced by the Common Law Procedure Act, 1854, and they are regulated by ss. 3—10 of that Act.

Questions of account.

s. 3. "If it be made appear, at any time after the issuing of the writ, to the satisfaction of the Court or a Judge, upon the application of either party, that the matter in dispute consists wholly or in part of matters of mere account, which cannot conveniently be tried in the ordinary way, it shall be lawful for such Court or Judge, upon such application, if they or he think fit, to decide such matter in a summary manner, or to order that such matter, either wholly or in part, be referred to an arbitrator appointed by the parties, or to an officer of the Court, *or in country causes, to the Judge of any County Court*, upon such terms as to costs and otherwise as such Court or Judge shall think reasonable; and the decision or order of such Court or Judge or the award or certificate of such referee, shall be enforceable by the same process as the finding of a jury upon the matter referred."

This is repealed as to County Court Judges by 21 & 22 Vict. c. 74, s. 5. As to the classes of cases to which the section applies, see note on the section in Day's C. L. P. Acts, p. 264, ed. 4; and *Ward v. Pilley*, 5 Q. B. D. 427; where *Clow v. Harper*, 3 Ex. D. 198, was not referred to. See also *Knight v. Coales*, 19 Q. B. D. 296.

For form of order of reference, see *post*, p. 621.

Special case or issue.

s. 4. "If it shall appear to the Court or a Judge that the allowance or disallowance of any particular item or items in such account depends upon a question of law fit to be decided by the Court, or upon a question of fact fit to be decided by a jury, or by a Judge upon the consent of both parties as hereinbefore provided, it shall be lawful for such Court or Judge to direct a case to be stated, or an issue or issues to be tried; and the decision of the Court upon such case, and the finding of the jury or Judge upon such issue or issues shall be taken and acted upon by the arbitrator as conclusive."

The provisions of O. XXXIV. apply to such cases by virtue of rule 7 of that Order.

Arbitrator may state case.

s. 5. "It shall be lawful for the arbitrator upon any compulsory reference under this Act, or upon any reference by consent of parties where the submission is or may be made a rule or order of any of the Superior Courts of Law or Equity at Westminster, if he shall think fit, and if it is not provided to the contrary, to state his award, as to the whole or any part thereof, in the form of a special case for the opinion of the Court, and when an action is referred, judgment, if so ordered, may be entered according to the opinion of the Court."

*Appeal*.—Error did not lie from the decision of the Court upon a case so stated. But now, under S. C. Jud. Act, 1873, s. 19, *ante*, p. 10, an appeal lies from the judgment of a Divisional Court upon a case stated under this section: *Shubrook v. Tufnell*, 9 Q. B. D. 621.

This section applies to arbitrations under the Lands Clauses Act, 1845: *Rhodes v. Airedale Commissioners*, 1 C. P. D. 380; see too *Warburton v. Haslingdean Local Board*, 48 L. J., C. P. 451. See now O. LIX., r. 3, *post*, p. 451, which provides an appeal to a Divisional Court in compulsory references.

Reference at trial.

s. 6. "If upon the trial of any issue of fact by a Judge under this Act it shall appear to the Judge that the questions arising thereon involve matter of account which cannot conveniently be tried before him, it shall be lawful for him, at his discretion, to order that such matter of account be referred to an arbitrator appointed by the parties, or to an officer of the Court, *or in country causes to a Judge of any County Court*, upon such terms as to costs and otherwise as such Judge shall think reasonable; and the award or certificate of such referee shall have the same effect as hereinbefore provided as to the award or certificate of a referee before trial; and it shall be competent for the Judge to



proceed to try and dispose of any other matters in question not referred in like manner as if no reference had been made."

Ord. XXXVI.  
r. 10.

This section is repealed as to County Court Judges by 21 & 22 Vict. c. 74, s. 5. See also the larger provision of S. C. Jud. Act, 1873, ss. 56 and 57, *ante*, pp. 46, 47.

- s. 7. "The proceedings upon any such arbitration as aforesaid shall, except otherwise directed hereby or by the submission or document authorizing the reference, be conducted in like manner, and subject to the same rules and enactments, as to the power of the arbitrator and of the Court, the attendance of witnesses, the production of documents, enforcing or setting aside the award, and otherwise, as upon a reference made by consent under a rule of Court or Judge's order."

Proceedings  
on reference.

As to reference to official referee by parties under agreement of reference, see S. C. Jud. Act, 1884, s. 11, *ante*, p. 116.

This section and the next are coextensive with s. 5, and their provisions apply to references by consent: *Re Morris*, 6 E. & B. 383. As to the attendance of witnesses and the production of documents before an arbitrator, see 3 & 4 Will. IV. c. 42, s. 40; and App. K, Nos. 25—26, *post*, p. 618.

- s. 8. "In any case where reference shall be made to arbitration as aforesaid, the Court or a Judge shall have power at any time, and from time to time, to remit the matters referred, or any or either of them, to the reconsideration and redetermination of the said arbitrator, upon such terms, as to costs and otherwise, as to the said Court or Judge may seem proper."

Power to remit  
to arbitrator.

- s. 9. "All applications to set aside any award made on a compulsory reference under this Act shall and may be made within the first seven days of the term next following the publication of the award to the parties, whether made in vacation or term; and if no such application is made, or if no rule is granted thereon, or if any rule granted thereon is afterwards discharged, such award shall be final between the parties."

Setting aside  
award.

*Effect of Rules.*—This and the preceding section have been qualified by the following rules:—

By O. LII., rr. 2, 4, *post*, pp. 387, 388, an application to set aside an award is to be made by ordinary notice of motion, without any rule or order *nisi*.

By O. LXIV., r. 14, *post*, p. 471, an application to set aside an award may now be made at any time before the last day of the sittings next after the publication of the award, thus getting rid of the old computation of time by terms.

By O. LIX., r. 3, *post*, p. 451, an appeal lies to a Divisional Court in any case of a compulsory reference upon any question of law.

- s. 10. "Any award made on a compulsory reference under this Act may, by authority of a Judge, on such terms as to him may seem reasonable, be enforced at any time after seven days from the time of publication, notwithstanding that the time for moving to set it aside has not elapsed."

Enforcement.

- s. 11. "Whenever the parties to any deed or instrument in writing to be hereafter made or executed, or any of them, shall agree that any then existing or future differences between them or any of them shall be referred to arbitration, and any one or more of the parties so agreeing, or any person or persons claiming through or under him or them, shall nevertheless commence any action at law or suit in equity against the other party or parties, or any of them, or against any person or persons claiming through or under him or them in respect of the matters so agreed to be referred, or any of them, it shall be lawful for the Court in which action or suit is brought, or a Judge thereof, on application by the defendant or defendants, or any of them, after appearance and before plea or answer, upon being satisfied that no sufficient reason exists why such matters cannot be or ought not to be referred to arbitration according to such agreement as aforesaid, and that the defendant was at the time of the bringing of such action or suit, and still is, ready

Submission  
and power to  
stay.

Ord. XXXVI.  
r. 10.

and willing to join and concur in all acts necessary and proper for causing such matters so to be decided by arbitration, to make a rule or order staying all proceedings in such action or suit, on such terms as to costs and otherwise as to such Court or Judge may seem fit; provided always, that any such rule or order may at any time afterwards be discharged or varied as justice may require."

*Stay of proceedings.*—An agreement to refer disputes to a foreign tribunal is within this section: *Law v. Garrett*, 8 Ch. D. 26.

*Revocation of submission.*—See *Randell v. Thompson*, 1 Q. B. D. 748; *Piercy v. Young*, 14 Ch. D. 200; and *Fraser v. Ehrensperger*, 12 Q. B. D. 310; *Deutsche Springsteff Gesellschaft v. Briscoe*, 20 Q. B. D. 177; *Re Mitchell and Governor of Ceylon*, 36 W. R. 873.

Single arbitrator.

- s. 12. "If in any case of abitation the document authorizing the reference provide that the reference shall be to a single arbitrator, and all the parties do not, after differences have arisen, concur in the appointment of an arbitrator; or if any appointed arbitrator refuse to act, or become incapable of acting, or die, and the terms of such document do not show that it was intended that such vacancy should not be supplied, and the parties do not concur in appointing a new one; or if, where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator, such parties or arbitrators do not appoint an umpire or third arbitrator; or if any appointed umpire or third arbitrator refuse to act, or become incapable of acting, or die, and the terms of the document authorizing the reference do not show that it was intended that such a vacancy should not be supplied, and the parties or arbitrators respectively do not appoint a new one; then in every such instance any party may serve the remaining parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator respectively; and if within seven clear days after such notice shall have been served, no arbitrator, umpire, or third arbitrator be appointed, it shall be lawful for any Judge of any of the Superior Courts of Law or Equity at Westminster, upon summons to be taken out by the party having served such notice as aforesaid, to appoint an arbitrator, umpire, or third arbitrator, as the case may be, and such arbitrator, umpire, and third arbitrator respectively shall have the like power to act in the reference and make an award as if he had been appointed by consent of all parties."

Two arbitrators, failure of one.

- s. 13. "When the reference is or is intended to be to two arbitrators, one appointed by each party, it shall be lawful for either party, in the case of the death, refusal to act, or incapacity of any arbitrator appointed by him, to substitute a new arbitrator, unless the document authorizing the reference show that it was intended that the vacancy should not be supplied; and if on such a reference one party fail to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party shall have appointed an arbitrator, and shall have served the party so failing to appoint with notice in writing to make the appointment, the party who has appointed an arbitrator may appoint such arbitrator to act as sole arbitrator in the reference, and an award made by him shall be binding on both parties as if the appointment had been by consent; provided, however, that the Court or a Judge may revoke such appointment on such terms as shall seem just."

Umpire.

- s. 14. "When the reference is to two arbitrators, and the terms of the document authorizing it do not show that it was intended that there should not be an umpire, or provide otherwise for the appointment of an umpire, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award, unless they be called upon by notice as aforesaid to make the appointment sooner."

Time for making award.

- s. 15. "The arbitrator acting under any such document or compulsory order of reference as aforesaid, or under any order referring the award back, shall make his award under his hand, and (unless such document or



order respectively shall contain a different limit of time) within three months after he shall have been appointed, and shall have entered on the reference, or shall have been called upon to act by a notice in writing from any party, but the parties may, by consent in writing enlarge the term for making the award; and it shall be lawful for the Superior Court of which such submission, document, or order is or may be made a rule or order, or for any Judge thereof, for good cause to be stated in the rule or order for enlargement, from time to time to enlarge the term for making the award; and if no period be stated for the enlargement in such consent or order for enlargement, it shall be deemed to be an enlargement for one month; and in any case where an umpire shall have been appointed, it shall be lawful for him to enter on the reference in lieu of the arbitrators, if the latter shall have allowed their time or their extended time to expire without making an award, or shall have delivered to any party or to the umpire a notice in writing stating that they cannot agree."

Ord. XXXVI.  
r. 10.

- s. 16. "When any award made on any such submission, document or order of reference as aforesaid, directs that possession of any lands or tenements, capable of being the subject of an action of ejectment shall be delivered to any party, either forthwith or at any future time, or that any such party is entitled to the possession of any such lands or tenements, it shall be lawful for the Court of which the document authorizing the reference is or is made a rule or order to order any party to the reference who shall be in possession of any such lands or tenements, or any person in possession of the same claiming under or put in possession by him since the making of the document authorizing the reference, to deliver possession of the same to the party entitled thereto, pursuant to the award, and such rule or order to deliver possession shall have the effect of a judgment in ejectment against every such party or person named in it, and execution may issue, and possession shall be delivered by the sheriff as on a judgment in ejectment."

Award for land.

- s. 17. "Every agreement or submission to arbitration by consent, whether by deed or instrument in writing not under seal, may be made a rule of any one of the Superior Courts of Law or Equity at Westminster, on the application of any party thereto, unless such agreement or submission contain words purporting that the parties intend that it should not be made a rule of Court; and if in any such agreement or submission it is provided that the same shall or may be made a rule of one in particular of such Superior Courts, it may be made a rule of that Court only; and if when there is no such provision a case be stated in the award, for the opinion of one of the Superior Courts, and such Court be specified in the award, and the document authorizing the reference have not, before the publication of the award to the parties been made a rule of Court, such document may be made a rule only of the Court specified in the award; and when in any case the document authorizing the reference is or has been made a rule or order of any one of such Superior Courts, no other of such Courts shall have any jurisdiction to entertain any motion respecting the arbitration or award."

Making agreement or submission a rule of Court.

As to reference to official referee by parties under agreement of reference, see S. C. Jud. Act, 1884, s. 11, *ante*, p. 116.

*Making submission a rule of Court.*—The proper course now, it seems, is to make the submission and not the award a rule of Court: *Jones v. Jones*, 14 Ch. D. 593. But see *Re Rolfe*, 28 Sol. J. 165. This may be done by an *ex parte* application at chambers: *Re Davey*, 49 L. J., Ch. 568. As to what constitutes a submission, see *Re Duedy and Hartcup*, 15 Q. B. D. 426. As to enforcing the award in a reference by consent, see *Jones v. Wedgwood*, 19 Ch. D. 56.

*Revocation.*—A submission which can merely be made a rule of Court under s. 17 is not thereby rendered irrevocable under 3 & 4 Will. IV. c. 42, s. 39; that section applying only to a submission by rule of Court in an action, or a submission containing an agreement that it may be made a rule of Court; *Mills v. Bayley*, 2 H. & C. 36; *Thomson v. Anderson*, 9 Eq. 523; *Re Rouse and Meier*, L. R., 6 C. P. 212; *Randell v. Thompson*, 1 Q. B. D. 748; *Deutsche Sprinsteff*



Ord. XXXVI. *Gesellschaft v. Briscoe*, 20 Q. B. D. 177; *Re Mitchell and Governor of Ceylon*, 36 W. R. 873. The Court has power to give leave to revoke a submission where it appears that the arbitrator is going wrong in point of law, even in a matter within his jurisdiction: *E. & W. India Dock Co. v. Kirk and Randell*, 12 App. Cas. 738. A general agreement to refer future differences as opposed to a submission of an existing dispute to a particular arbitrator cannot, it seems, be revoked by one party alone: *Piercy v. Young*, 14 Ch. D. 200.

The authority of a single arbitrator appointed under s. 13 can be revoked before award made: *Fraser v. Ehrensperger*, 12 Q. B. D. 310.

### III. Notice and Entry of Trial.

435.  
Notice of trial  
by plaintiff.  
[Cf. O.  
XXXVI. r. 3.]

11. Notice of trial may be given in any cause or matter by the plaintiff or other party in the position of plaintiff. Such notice may be given with the reply (if any) whether it closes the pleadings or not, or at any time after the issues of fact are ready for trial.

*Notice of trial, where evidence taken by affidavit.*—In such case the notice of trial must be given at the same time after the close of the evidence, as in other cases after the close of the pleadings: O. XXXVIII., r. 30, *post*, p. 328.

*Close of the pleadings.*—See O. XXIII., r. 5, and O. XXVII., r. 13, *ante*, pp. 230, 241.

436.  
Notice of trial  
by defendant,  
or to dismiss  
action.  
[Cf. O.  
XXXVI. rr. 4,  
4a.]

12. If the plaintiff does not within *six weeks* after the close of the pleadings, or within such extended time as the Court or a Judge may allow, give notice of trial, the defendant may, before notice of trial given by the plaintiff, give notice of trial, or may apply to the Court or Judge to dismiss the action for want of prosecution; and on the hearing of such application, the Court or a Judge may order the action to be dismissed accordingly, or may make such other order and on such terms, as to the Court or Judge may seem just.

*Effect of Rule.*—This rule provides a mode of proceeding somewhat analogous to that under s. 101 of the C. L. P. Act, 1852; but the present procedure is much simplified.

*Notice of trial.*—The notice of trial must be an effective notice: *Crick v. Hewlett*, 27 Ch. D. 354; see note to r. 16, *infra*.

*Application to dismiss.*—An application to dismiss for want of prosecution should ordinarily be made by summons: *Freason v. Loe*, 26 W. R. 138. It may, however, be made in Court on motion; and, if the usual notice of motion is given, and the plaintiff does not at once submit to speed the cause, and tender the costs of the notice, the defendant, if the usual order is made, will have his costs of making the motion in Court: *Evelyn v. Evelyn*, 13 Ch. D. 138. As to the proper course to adopt, where there are several defendants in respect of some of whom the pleadings are not closed, see *Ambrose v. Evelyn*, 11 Ch. D. 759.

*Security for costs.*—Upon an application under this rule an order was made that the plaintiff should give security for costs. The C. A. refused to interfere with the discretion of the Judge, though intimating that the order was unusual, and ought to be made only under very special circumstances: *Wilmott v. Freehold House Property Co.*, 33 W. R. 554.

*Time.*—The six weeks mentioned in the above rule is not a time for doing any act or taking any proceedings within O. LXIV., r. 7, and the Court cannot make an order giving the defendant leave to give notice of trial, if the plaintiff did not give such notice, within a shorter period than six weeks from the close of the pleadings: *Saunders v. Pawley*, 14 Q. B. D. 234.

*Vacating lis pendens.*—As to vacating the registration of a *lis pendens*, where an action is dismissed under this rule, see *Pooley v. Bosanquet*, 7 Ch. D. 541.

Ord. XXXVI.  
rr. 12—17.

13. Notice of trial shall state whether it is for the trial of the cause or matter or of issues therein; and in actions in the Queen's Bench Division the place and day for which it is to be entered for trial. It shall be in the Form No. 16 in Appendix B, with such variations as circumstances may require.

437.  
Form of notice  
of trial.  
[Cf. O.  
XXXVI. r. 8.]

For the Form referred to, see *post*, p. 549. The words which confine this rule to Queen's Bench actions are repealed by the next succeeding rule, which was introduced in 1884.

*Service of notice.*—As to any defendant who has not appeared, the notice may be served by being filed at the Central Office or with the District Registrar: O. XIX., r. 10; O. LXVII., r. 4. See *Dymond v. Croft*, 3 Ch. D. 512; *Morton v. Miller*, 3 Ch. D. 516.

13A. Order XXXVI., Rule 13, shall be read as if the words "in actions in the Queen's Bench Division" were omitted therefrom.

437a.  
Amendment  
of r. 13.

14. Ten days' notice of trial shall be given unless the party to whom it is given has consented, or is under terms or has been ordered to take short notice of trial; and shall be sufficient in all cases, unless otherwise ordered by the Court or a Judge. Short notice of trial shall be four days' notice, unless otherwise ordered.

438.  
Length of  
notice of trial.  
[Cf. O.  
XXXVI. r. 9.]

Under the corresponding repealed rule, O. XXXVI., r. 9, short notice of trial was in all cases four days. See *The Avenir*, 9 P. D. 84.

15. Notice of trial shall be given before entering the trial: and the trial may be entered notwithstanding that the pleadings are not closed, provided that notice of trial has been given.

439.  
Times for  
entry of trial.  
[Cf. O.  
XXXVI. r. 10.]

*Effect of Rule.*—Under the repealed rules notice of trial might be given, but the cause would not be entered for trial before the close of the pleadings: *Asquith v. Molineaux*, 49 L. J., Q. B. 800. The present rule removes that restriction.

For form of entry, see *post*, p. 594.

16. In London and Middlesex, unless within six days after notice of trial is given, the trial shall be entered by one party or the other, the notice of trial shall be no longer in force.

440.  
Duration of  
notice of trial.  
[Cf. O.  
XXXVI. r.  
10a.]

*Omission to enter trial within the time limited.*—Where notice of trial was given by the plaintiff, but the trial was not entered within six days after, an order was made to dismiss the action for want of prosecution: *Crick v. Hewlett*, 27 Ch. D. 354.

"No longer in force."—Where notice of trial became no longer in force within this rule, and a second notice of trial was given, and within ten days an application for a jury was made, it was held that such application was too late under r. 6, *supra*: *Tonsley v. Heffer*, 19 Q. B. D. 153.

17. Notice of trial for London or Middlesex shall not be or operate as for any particular sittings; but shall be deemed to be for any day after the expiration of the notice on which the trial may come on in its order upon the list.

441.  
Notice for  
London or  
Middlesex.  
[O. XXXVI.  
r. 11.]

As to sittings in London and Middlesex, see S. C. Jud. Act, 1873, s. 30, *ante*, p. 31.



Ord. XXXVI.  
rr. 18—22a.

442.  
Notice for the  
country.

[O. XXXVI.  
r. 12.]

443.  
Countermand-  
ing notice of  
trial.

[O. XXXVI.  
r. 13.]

444.  
Entry by  
opposite party.  
[O. XVI.  
r. 14.]

445.  
Setting down  
Chancery  
cause on  
further con-  
sideration.

18. Notice of trial elsewhere than in London or Middlesex shall be deemed to be for the first day of the then next assizes at the place for which notice of trial is given.

As to the assizes, see S. C. Jud. Act, 1873, s. 29, *ante*, p. 30.

19. No notice of trial shall be countermanded except by consent, or by leave of the Court or a Judge, which leave may be given subject to such terms as to costs, or otherwise, as may be just.

20. If the party giving notice of trial for London or Middlesex omits to enter the trial on the day or day after giving notice of trial, the party to whom notice has been given may, unless the notice has been countermanded under the last preceding Rule, within *four days* enter the trial.

21. When any cause or matter in the Chancery Division shall have been adjourned for further consideration, the same may, after the expiration of *eight days*, and within *fourteen days* from the filing of the Chief Clerk's certificate, be set down by the Registrar in the cause-book for further consideration, on the written request of the solicitor for the plaintiff or party having the conduct of the proceedings, and after the expiration of such *fourteen days* the cause or matter may be set down by the Registrar on the written request of the solicitor for the plaintiff or for any other party; and in either case, upon production of the judgment or order adjourning further consideration, or an office copy thereof, and an office copy of the Chief Clerk's certificate or a memorandum of the date when the certificate was filed, endorsed on the request by the proper officer. The request may be in the Form No. 26 in Appendix L. The cause or matter when so set down shall not be put into the paper for further consideration until after the expiration of *ten days* from the day on which the same was so set down, and shall be marked in the Cause-book accordingly. Notice thereof shall be given to the other parties in the action at least *six days* before the day for which the same may be so marked for further consideration. Such notice may be in the Form No. 27 in Appendix L.

This rule is taken from C. O. XXI., r. 10. For forms referred to, see *post*, pp. 650, 651. The form of notice of setting down referred to in the rule need not be peremptorily followed: *Jones v. Webb*, 30 Sol. J. 109.

*Evidence.*—The evidence referred to in the Chief Clerk's certificate cannot be read at the hearing on further consideration, unless notice to read it has been given: *Re Chennell*, 8 Ch. D. 492, at p. 504; see also *Re Brier*, 26 Ch. D. 238, at p. 242. The Court may, if it thinks fit, receive fresh evidence by affidavit on the hearing on further consideration, under the powers of O. XXXVII., r. 1: *May v. Newton*, 34 Ch. D. 347; see also *Re Michael*, 52 L. T. 609; *Re Revill*, 55 L. T. 542.

#### IV. Entry in District Registry.

446a.  
Trial of wit-  
ness actions in  
Chancery  
Division at  
Liverpool and  
Manchester.

22A. If, on the 1st of June and the 1st of December respectively in any year, it shall appear that ten or more witness causes by the principal Act assigned to the Chancery Division, proceeding in the District Registries of Liverpool and Manchester, or either of them, have been set down for trial in those Registries, special sittings for the trial of such causes, commencing as soon after those dates



respectively as conveniently may be, shall be held at Liverpool and Manchester, for the trial of the causes set down for trial at such places respectively, before one of the Judges of the High Court (according to such arrangements as may be from time to time determined amongst themselves): Provided that, in any case where at the time aforesaid it shall appear that the number of such causes is less than ten, no special sittings shall take place for that occasion, but the causes shall, subject to any application which may be made to change the place of trial, be included in the list of trials for the next ensuing assizes at Liverpool and Manchester, as the case may be: Provided also that, if it shall appear to the Judge holding any such special sittings, that any cause appearing in the list for trial thereat has no local connection with the County Palatine of Lancashire, he may order the same to be struck out, and give such directions as he may think fit as to the trial thereof in the High Court.

Ord. XXXVI.  
rr. 22a—24.

This rule was introduced in July, 1886, in substitution for rule 22A (R. S. C., 1884, r. 3).

**22B.** After notice of trial has been given of any cause, matter, or issue to be tried elsewhere than in London or Middlesex, either party may, at any time not less than *seven days* before the commission day appointed for such place, enter the trial at the next assizes in the District Registry (if any) of the city or town where the trial is to be had, or with the associate. No later entry shall be allowed, except by leave of a Judge going that circuit, or by order of a Judge at Chambers subject to the consent of a Judge going that circuit.

446b.  
Entry for trial in the court.

This rule was introduced in 1884 (R. S. C., Oct. 1884, r. 4) instead of the previously existing rule 22, which was repealed.

**23.** So long as there is no District Registry in the places enumerated in the first of the following columns, entries for trial may be made in the District Registries in the second of the following columns, *i.e.*, trials at—

447.  
Entries in certain places where no District Registry.

Bodmin	{ may be entered in the }	Truro.
Carnarvon	{ District Registry at }	Bangor.
Chelmsford	"	Colchester.
Lancaster	"	Preston.
Lewes	"	Brighton.
Monmouth	"	{ Newport,
Stafford	"	Monmouthshire.
Wells	"	Hanley.
Warwick	"	Bridgwater.
Winchester	"	Birmingham.
		Southampton.

District Registries have been established at Aberystwith, Carnarvon, and Winchester: W. N. (1884), Part II., p. 425.

**24.** The District Registrars shall provide two numbered lists for trials with juries and trials without juries respectively. The entry shall be made in the proper list in such vacant number as the party

448.  
Separate lists for jury and

**Ord. XXXVI. rr. 24—30.** entering shall select, and the lists shall be open for the inspection of all parties interested therein at all times, during office hours. At the time of entry two copies of the documents mentioned in Rule 30 of this Order shall be delivered as directed by the said Rule, one of which shall be duly stamped with the amount of the fee payable on entry of the action or issue for trial.

non-jury cases.

[Cf. O. XXXVI. r. 15a.]

Documents.

The provision in this rule as to separate lists for jury and non-jury cases was introduced in 1883. It appears to be consequential on rule 7, under which trial by a Judge alone, without a jury, will be the normal mode of trial.

449.  
Postponement or withdrawal of trial.

[Cf. O. XXXVI. r. 15a.]

450.  
Close of lists.

[Cf. O. XXXVI. r. 15a.]

**25.** When a trial which has been entered has been postponed or withdrawn under Order XXVI., Rule 2, or settled, the party who made the entry shall immediately thereupon give notice thereof to the District Registrar, and such entry shall be expunged from the list.

**26.** The District Registrar shall close the lists and transmit a corrected copy of the said lists, together with the two copies of the documents above referred to, to the Associate at the assize town in such time that the same may be received at his office before the opening of the Commission.

See, as to the lists referred to, rule 24, *ante*.

451.  
Filling up lists for trial.

[Cf. O. XXXVI. r. 15a.]

452.  
Entry by both parties.

[Cf. O. XXXVI. r. 15a.]

**27.** Trials shall be entered by the Associate in such vacant numbers in the lists so transmitted as the party entering may select. The lists shall then be renumbered consecutively, and shall be the cause-lists for the assizes.

**28.** If a trial be entered by both parties, it shall be tried in the order of the plaintiff's entry, and the defendant's entry shall be vacated.

### V. Lists for London and Middlesex.

453.  
Lists for London and Middlesex.

[Cf. O. XXXVI. r. 16.]

**29.** Separate lists of trials with juries and trials without juries respectively, to be tried at the sittings of the Queen's Bench Division for London and Middlesex respectively, shall be prepared, and the trials on each list shall be allotted without reference to any other list, and shall be tried at such times and in such Courts of the said Division as the Lord Chief Justice of England may arrange.

The provision in this rule as to separate lists for jury and non-jury cases was introduced in 1883. It appears to be consequential on rule 7, under which, trial by a Judge alone, without a jury, will be the normal mode of trial.

### VI. Papers for Judge.

454.  
Delivery of pleadings.

[O. XXXVI. rr. 17 and 17a.]

**30.** The party entering the trial shall deliver to the proper officer two copies of the whole of the pleadings, one of which shall be for the use of the Judge at the trial. Such copies shall be in print, except as to such parts (if any) of the documents as are by these Rules permitted to be written.

*Proper officer.*—See O. LXXI., r. 1, *post*, p. 514. In the Chancery Division the Registrar is the proper officer.

*Printing pleadings.*—Pleadings of less than ten folios need not be printed: O. XIX., r. 2, *ante*, p. 208.

VII. *Proceedings at Trial.*

Ord. XXXVI.  
rr. 31—33.

**31.** If, when a trial is called on, the plaintiff appears, and the defendant does not appear, the plaintiff may prove his claim, so far as the burden of proof lies upon him.

455.

Non-appearance of defendant.

*Proof of notice of trial.*—In *Cockshott v. London General Cab Co.*, 26 W. R. 31, it was held that the plaintiff must prove service of notice of trial; but this does not seem to be now required: *Chorlton v. Dickie*, 13 Ch. D. 160. Such proof has never been required in the Queen's Bench Division.

[O. XXXVI.  
r. 18.]

*Relief claimed by pleadings.*—The plaintiff having proved his case is entitled to such relief as he claims, and such other relief as is consistent therewith. In an action for specific performance of an open contract for purchase of leaseholds, where defendant had paid a deposit but failed to complete, at the trial, the defendant not appearing, the plaintiff asked for judgment for rescission and forfeiture of the deposit. Held, that he was entitled to judgment for specific performance as claimed by his pleadings, but not for rescission and forfeiture: *Stone v. Smith*, 35 Ch. D. 188.

**32.** If, when a trial is called on, the defendant appears, and the plaintiff does not appear, the defendant, if he has no counter-claim, shall be entitled to judgment dismissing the action, but if he has a counter-claim, then he may prove such counter-claim so far as the burden of proof lies upon him.

456.

Non-appearance of plaintiff.  
[O. XXXVI.  
r. 19.]

*Proof of notice of trial.*—It is not necessary for the defendant to prove that he has been served with notice of trial: *James v. Crow*, 7 Ch. D. 410; *Ex parte Lows*, 7 Ch. D. 160; *Re Palmer*, 32 W. R. 83.

*Abatement after notice of trial given.*—Where notice of trial had been given by a sole plaintiff, who subsequently filed a liquidation petition under which a trustee was appointed, and no one appeared at the trial for the plaintiff or his trustee, Fry, J., held, that in the absence of the trustee, all he could do was to strike the case out of the list: *Eldridge v. Burgess*, 7 Ch. D. 411.

*Test action.*—Under this rule a test action was dismissed with costs: *Robinson v. Chadwick*, 7 Ch. D. 878.

*Non-delivery of papers.*—Where no papers were delivered, and plaintiff did not appear, the action was dismissed with costs: *Farrell v. Wake*, 36 L. T. 95.

**33.** Any verdict or judgment obtained where one party does not appear at the trial, may be set aside by the Court or a Judge upon such terms as may seem fit, upon an application made within *six days* after the trial; such application may be made either at the assizes or in Middlesex.

457.

Setting aside verdict or judgment by default.  
[O. XXXVI.  
r. 20.]

Cf. O. XXVII., r. 15, *ante*, p. 241.

*Cases.*—See *Wright v. Clifford*, 26 W. R. 369; *King v. Sandeman*, 38 L. T. 461; *Burgoine v. Taylor*, 9 Ch. D. 1; *Cockle v. Joyce*, 7 Ch. D. 56. If the application is granted, the terms usually imposed are the payment of the costs of the day, and of the application to restore: *Cockle v. Joyce*; *Burgoine v. Taylor*. An appeal will lie from an order refusing the application: *Burgoine v. Taylor*.

*Time for applying.*—It is imperative that the application be made within *six days* after the trial: *Walker v. James*, 34 W. R. 29; see, however, *Bradshaw v. Warlow*, 32 Ch. D. 403, in which case, decided under one of the Rules of the Palatine Court of Lancaster, almost identical in terms with the present rule, the C. A., whilst refusing an application to set aside the judgment, expressed an opinion (1) that the Judge had power to enlarge the time; and (2) that it was not necessary to make a substantive application for such enlargement.

*Appeal from default judgment.*—The C. A. has jurisdiction to hear an appeal from a judgment by default, but such appeals will not be encouraged: *Vint v. Hudspeth*, 29 Ch. D. 322.



Ord. XXXVI.  
rr. 34—37.

458.

Adjournment  
of trial.

[O. XXXVI.  
r. 20.]

**34.** The Judge may, if he think it expedient for the interests of justice, postpone or adjourn a trial for such time, and to such place, and upon such terms, if any, as he shall think fit.

*Cases.*—See *Lydall v. Martinson*, 5 Ch. D. 780, as to costs of adjournment: and *Stewart v. Gladstone*, 7 Ch. D. 394, as to grounds of postponing a trial. In a patent action, commenced in the Ch. Div., and assigned to Kay, J., the plaintiff named Manchester as the place of trial, and the action was set down for trial at the assizes. When it came on for trial, the Judge of assize declined to try it on the ground of pressure of business, and remitted it for trial by Kay, J. It was held, that this was not a sufficient ground for an order under this rule: *Fairburn v. Household*, 53 L. T. 513.

459.

Habeas corpus  
on adjourn-  
ment.

**35.** Where a party is brought up to attend the trial or hearing of a cause or matter by virtue of any writ of *habeas corpus* duly issued from the Central Office, and by reason of the pressure of other business, or from any other cause, the trial or hearing of the cause or matter in which such party is concerned is postponed to a future day, a new writ of *habeas corpus* may be issued for such future day, if the Court or a Judge shall so direct, without payment of any fee.

This is taken from C. O. XXX., r. 3.

The Court has no power to award a writ of *habeas corpus* to bring a party to the suit in custody before the Court, to argue his case in person: *Weldon v. Neal*, 15 Q. B. D. 471.

460.

Speeches to  
jury.

**36.** Upon a trial with a jury, the addresses to the jury shall be regulated as follows:—The party who begins, or his counsel, shall be allowed, at the close of his case, if his opponent does not announce any intention to adduce evidence, to address the jury a second time, for the purpose of summing up the evidence, and the opposite party, or his counsel, shall be allowed to open his case, and also to sum up the evidence, if any, and the right to reply shall be the same as heretofore.

*Right to begin.*—This rule is taken from s. 18 of the C. L. P. Act, 1854. On that section it is observed in Day's C. L. P. Act, ed. 3:—The right to begin ordinarily accompanies the *onus probandi*; the best test seems to be by ascertaining which side would be entitled to a verdict, if no evidence were given. *Ei incumbit probatio qui dicit, non qui negat*: *Amos v. Hughes*, 1 M. & Rob. 464; *Soward v. Leggett*, 7 C. & P. 613; *Geach v. Ingall*, 14 M. & W. 95. And in all cases where the plaintiff may recover damages of unascertained amount, he is, notwithstanding the proof of the issues may rest upon the defendant, but in strict accordance with this principle, entitled to begin: *Mercer v. Whall*, 5 Q. B. 447; *Pim v. Eastern Co. Ry.*, 2 F. & F. 133.

*Witness action in Chancery Division.*—As to order of speeches of counsel on trial of a witness action in the Chancery Division, see *Kino v. Rudkin*, 6 Ch. D. 160, at p. 163; *Metzler v. Wood*, 26 W. R. 125.

461.

Evidence in  
mitigation in  
libel and  
slander.

**37.** In actions for libel or slander, in which the defendant does not by his defence assert the truth of the statement complained of, the defendant shall not be entitled on the trial to give evidence in chief, with a view to mitigation of damages, as to the circumstances under which the libel or slander was published, or as to the character of the plaintiff, without the leave of the Judge, unless *seven days at least* before the trial he furnishes particulars to the plaintiff of the matters as to which he intends to give evidence.

*Object of Rule.*—This rule was introduced in 1883. In *Scott v. Sampson*, 8

Q. B. D. 491, it had been held in an action for defamation in which a justification was pleaded that evidence as to the character of the plaintiff, with a view to mitigation of damages could not be admitted unless the facts proposed to be proved were set out in the pleadings.

Ord. XXXVI.  
rr. 37—40.

**38.** The Judge may in all cases disallow any questions put in cross-examination of any party or other witness which may appear to him to be vexatious, and not relevant to any matter proper to be inquired into in the cause or matter.

462.  
Restrictions  
on cross-  
examination.

This rule was introduced in 1883; and is intended to restrict the abuse of the power of cross-examination. As to this power and its abuse, see Stephen on Evidence, Art. 129, and note No. XLVII. thereto.

**39.** The Judge may, at or after a trial, direct that judgment be entered for any or either party, or adjourn the case for further consideration, or leave any party to move for judgment. No judgment shall be entered after a trial without the order of a Court or Judge.

463.  
Judgment at  
trial.  
Adjournment  
for further  
consideration.  
[O. XXXVI.  
r. 22a.]

*Effect of Rule.*—The above rule prescribes the courses open to the Judge at the trial of an action. He may order judgment to be entered. He may adjourn the matter for further argument; which must take place before himself. He may leave the matter at large for either party to move for judgment as they think fit. Sect. 17 of App. Jur. Act, 1876, clearly contemplates that this motion should be made to the Judge who tried the case. And, except only where the case is tried with a jury and a new trial is desired, or where the case is tried by a referee, the tribunal to review the decision of a Judge at or after a trial is the Court of Appeal, not a Divisional Court.

*Entry of judgment.*—See O. XLI., *post*, p. 336.

*Motion for new trial.*—See O. XXXIX., *post*, p. 328.

*Motion for judgment.*—See O. XL., *post*, p. 332.

*Motion to C. A. to set aside judgment.*—See O. XL., rr. 3—5, *post*, p. 334.

*Findings of jury on some of several issues.*—Where specific issues are submitted to a jury, and they agree in their findings on some of the issues, but cannot agree in the rest, the Judge may take their findings on those as to which they are agreed and discharge them as to the rest: *Marsh v. Isaacs*, 45 L. J., C. P. 505.

*Withdrawal of a juror.*—The withdrawal of a juror does not legally put an end to the cause: *Thomas v. Exeter, &c. Co.*, 18 Q. B. D. 822.

*Hearing in camera.*—Except in cases affecting lunatics and wards of Court, or where the old ecclesiastical procedure continues, there is no power for a Judge to hear a case in private. It must be tried in open Court: *Nagle-Gillman v. Christopher*, 4 Ch. D. 173; and O. XXXVII., r. 1. But where a public trial would defeat the object of the action it would seem that the Court has power to hear the case in private. See *dictum* of Lord Cairns in *Andrew v. Raeburn*, 9 Ch. 522; and *Mellor v. Thompson*, 31 Ch. D. 55.

**40.** The Registrar, Master, or other proper officer present at any hearing or trial, shall make a note of the times at which such hearing or trial shall commence and terminate respectively, on each day on which the same shall take place, for communication to the taxing-officer if required.

464.  
Note of pro-  
ceedings by  
officer at trial.

This rule was introduced in 1883.

Ord. XXXVI.  
rr. 41—45.

465.

Entry by  
Associate or  
Master.

[Cf. O.  
XXXVI.  
r. 23.]

**41.** Upon every trial at the assizes, or at the sittings of the Queen's Bench Division for London and Middlesex, where the officer present at the trial is not the officer by whom judgments ought to be entered, the Associate or Master shall enter all such findings of fact as the Judge may direct to be entered, and the directions, if any, of the Judge as to judgment, and the certificates, if any, granted by the Judge, in a book to be kept for the purpose.

*Certificates.*—As to certifying for a special jury, see 6 Geo. IV. c. 50, s. 34. As to certifying for costs under the County Courts Act, 1867, see S. C. Jud. Act, 1873, s. 67, and note thereto, *ante*, p. 50.

*Associates.*—The Associates in London have now become Masters of the Supreme Court. See S. C. Jud. Act, 1879, s. 8, *ante*, p. 97.

466.

Certificate of  
judgment.

[O. XXXVI.  
r. 24.]

**42.** If the Judge shall direct that any judgment be entered for any party absolutely, the certificate of the Associate or Master to that effect shall be a sufficient authority to the proper officer to enter judgment accordingly. The certificate shall be in the Form No. 17 in Appendix B, with such variations as circumstances may require.

For this form, see *post*, p. 549.

*Entry of judgment.*—See O. XLI., *post*, p. 336.

### VIII. Assessors, Commissioners, and Referees.

467.

Trial with  
assessors.

[O. XXXVI.  
r. 28.]

**43.** Trials with assessors shall take place in such manner and upon such terms as the Court or a Judge shall direct.

*Assessors.*—See S. C. Jud. Act, 1873, s. 56, *ante*, p. 46. Under the repealed rules it was held this section did not take away the right of a party to have issues of fact tried by a jury: *Sugg v. Silber*, 1 Q. B. D. 362.

As to the right to a jury under the present rules, see rules 2 to 7 of this Order and notes thereto.

468.

Order for trial  
on circuit, or  
London or  
Middlesex  
sittings.

[Cf. O.  
XXXVI.  
r. 29.]

**44.** In any cause or matter the Court, or a Judge of the Division to which the cause or matter is assigned, may, at any time, or from time to time, order the trial and determination of such cause or matter, or of any issue of fact, or partly of fact and partly of law, therein, by any commissioner appointed in pursuance of the 29th section of the principal Act, or at the sittings to be held in London and Middlesex, and such cause, matter, or issue shall be tried and determined accordingly.

Compare with this power the powers given by O. XXV., r. 2, and O. XXXIV., r. 2.

See, also, S. C. Jud. Act, 1873, s. 29, and note thereto, *ante*, p. 30, as to trials on circuit. London sittings are now held at the Royal Courts of Justice.

469.

Rotation  
among Official  
Referees.

[Cf. O.  
XXXVI.  
r. 29a.]

**45.** The business to be referred to the Official Referees appointed under the Principal Act, shall be distributed among such Official Referees in rotation by the clerks to the Registrars of the Supreme Court, Chancery Division, in the manner now used in the distribution of business amongst the Conveyancing Counsel of the Court.

As to the rota for Conveyancing Counsel, see O. LI., rr. 9—13, *post*, pp. 385, 386.



46. When an order shall have been made referring any business to the Official Referee in rotation, such order, or a duplicate of it, shall be produced to the Registrar's clerk, whose duty it is to make such distribution as in the last Rule mentioned; and such clerk shall (except in the case provided for by Rule 47 of this Order), endorse on the reference a note specifying the name of the Official Referee in rotation to whom such business is to be referred; and the order so endorsed shall be a sufficient authority for the Official Referee to proceed with the business so referred.

Ord. XXXVI.  
rr. 46—48.

470.

Indorsement  
of order with  
name of  
Referee.  
[O. XXXVI.  
r. 29b.]

47. The two last preceding Rules of this Order are not to interfere with the power of the Court or a Judge to direct or transfer a reference to any one in particular of the said Official Referees, where it appears to the Court or Judge to be expedient; but every such reference or transfer shall be recorded in the manner mentioned in Order LI., Rule 10, and a note to that effect be endorsed on the order of reference or transfer; and in case any such reference or transfer shall have been or shall be made to any one in particular of the said Referees, then the clerk in making the distribution of the business according to such rotation as aforesaid shall have regard to any such reference or transfer.

471.

Order to refer  
to particular  
Referee.  
[Cf. O.  
XXXVI.  
r. 29c.]

For the rule referred to, see *post*, p. 385.

See, also, S. C. Jud. Act, 1884, s. 9, *ante*, p. 116.

48. Where any cause or matter, or any question in any cause or matter, is referred to a Referee, he may, subject to the order of the Court or a Judge, hold the trial at or adjourn it to any place which he may deem most convenient, and have any inspection or view, either by himself or with his assessors (if any), which he may deem expedient for the better disposal of the controversy before him. He shall, unless otherwise directed by the Court or a Judge, proceed with the trial *de die in diem*, in a similar manner as in actions tried with a jury.

472.

Trial before  
Referee.  
[O. XXXVI.  
r. 30c.]

*Powers of Referees.*—See S. C. Jud. Act, 1873, s. 58, *ante*, p. 47.

*Control of Court.*—See S. C. Jud. Act, 1873, s. 59, *ante*, p. 47.

# REFEREES.

*Reference under Jud. Act, 1873, s. 56.*—The S. C. Jud. Act, 1873, s. 56, *ante*, p. 46, introduced a new kind of reference—new at least in most Divisions of the Court—under which the Referee is not to decide but to report; as matters referred to Chambers by the Court of Chancery formerly were reported upon. If a question be referred for inquiry and report under this section it is expressly provided that the Court may or may not adopt the report of the Referee.

*Reference under s. 57.*—S. 57, *ante*, p. 46, again provides for yet another kind of reference. Under it, the Referee is not, as under the previous section, merely to report facts, so as to enable the Court to determine the issues; he is to try the issues referred to him. The section authorizes a reference, *without consent*, of questions or issues where the matter involves any prolonged examination of documents or accounts, or any scientific, or local investigation, which cannot conveniently be made before a jury or conducted by the Court through its other ordinary officers. It authorizes a reference, *with consent*, of any question or issue of fact, or any question of account. Where the Court can compulsorily refer a question of account in an action it may at the same time refer all the other issues in the action: *Ward v. Pilley*, 5 Q. B. D. 427; *Knight v. Coates*, 19 Q. B. D. 296; but see *Clow v. Harper*, 3 Ex. D. 198.

*Order of reference.*—For form of order, see App. K. Nos. 32, 33, *post*, p. 620. In drawing up the order the forms given should be strictly followed: *Baroness Wenlock v. River Dee Co.*, 19 Q. B. D. 155, per Fry, L. J., at p. 159. The order should state whether it is made under s. 56 or s. 57: *White v. Peto*, W. N. (1886), 165.

Ord. XXXVI.  
rr. 48, 49.

*What may be referred.*—Under the repealed rules it was held that there was no power under this section, even with consent, to refer *the action*, nor anything except the questions or issues of fact arising in it, or some of them: *Mellin v. Monico*, 3 C. P. D. 142; and that under neither kind of reference had the Referee any power to direct judgment to be entered; that being for the Court: *Ibid.* But rule 50 of this Order expressly provides that a Referee shall have the same power to direct judgment to be entered as a Judge.

*Reference subject to review.*—The report on a reference under s. 56 is, by the terms of that section, subject to review. The finding of a Referee, on a reference under s. 57, is, by s. 58, *ante*, p. 47, equivalent to the verdict of a jury, and may be reviewed and set aside as a verdict may: see *Miller v. Pilling*, 9 Q. B. D. 736 at p. 738. And further now by rule 6 of O. XL., *post*, p. 335, where the Referee has directed judgment to be entered, any party may move to set aside the judgment and enter any other judgment, on the ground that upon the finding as entered the judgment is wrong.

*Case may be remitted to Referee.*—If a Referee states a case or finds the facts specially, the Court may require his reasons and explanations, and if necessary send the matter back to him or another Referee: r. 52, *infra*.

*Mode of trial.*—The trial of an action by a Referee is to be conducted in the same manner as before a Judge, and he is to have the same authority as a Judge, including the power to order discovery and production: rr. 49, 50, *infra*.

*Review of finding.*—It was held under the repealed rules, that an application to review the finding of a Referee under the Judicature Acts must be supported by evidence, on affidavit or otherwise, of the proceedings before him, and that counsel who appeared before him could not move on his own statement: *Stubbs v. Boyle*, 2 Q. B. D. 124. As to time for moving, see *Sullivan v. Rivington*, 28 W. R. 372, and rules 54, 55, *infra*; as to notice of motion, see *Graves v. Taylor*, 27 W. R. 412; and *Burrard v. Calisher*, 19 Ch. D. 644.

*Sittings.*—The provision directing a Referee to sit *de die in diem* is directory only: non-compliance with it is not a ground for setting aside his finding: *Robinson v. Robinson*, 35 L. T. 337.

*Peremptory appointment.*—A Referee has power, subject to the control of the Court, to peremptorily appoint a day for hearing a reference, and, in the absence of either party, to proceed with the same: *The Baroness Wenlock v. River Dee Co.*, 32 W. R. 220.

*Fees.*—For the fees payable on proceedings before Official Referees, see Ord. as to S. C. Fees, 1884, Sched. Nos. 88—91, *post*, p. 676; Ord. as to S. C. Fees, Dec. 1887, *post*, p. 694. Where a Queen's Counsel sat as Special Referee, a fee of five guineas a sitting was allowed as his remuneration: *Wallis v. Lichfield*, W. N. (1876), 130.

*Practice.*—See Dan. Pr., pp. 744—761; Dan. Forms, pp. 341—346; Chitt. Arch., pp. 1575—1584; Chitt. Forms, pp. 818—826.

See, further, S. C. Jud. Act, 1884, ss. 8—11, *ante*, p. 116.

473.  
Evidence and  
procedure  
before  
Referee.  
[Cf. O.  
XXXVI.  
r. 31.]

49. Subject to any order to be made by the Court or Judge ordering the same, evidence shall be taken at any trial before a Referee, and the attendance of witnesses may be enforced by *subpœna*, and every such trial shall be conducted in the same manner, as nearly as circumstances will admit, as trials are conducted before a Judge.

*Effect of rule.*—The corresponding repealed rule provided that the tribunal of the Referee should not be a public Court of Justice. The omission of this proviso makes the Referee's Court a public Court, and is in accordance with the policy of the other rules of this Order, which put the Referee on the footing of a Judge.

*Evidence.*—See as to evidence generally, O. XXXVII., r. 1, *post*, p. 307; as to *subpœnas*, O. XXXVII., rr. 26—34, *post*, pp. 315, 316.

*Subpœna.*—In an arbitration other than a reference to an Official or Special Referee there is no power to enforce the attendance of a witness by *subpœna*: *Rooney v. Whiteley*, W. N. (1883), 225. Where an action and all matters in



difference have been referred to an arbitrator, no *subpoena* will be granted under 17 & 18 Vict. c. 34, s. 1, in order to compel the attendance of witnesses residing out of the jurisdiction of the Court, for the hearing before the arbitrator is not a "trial" within the meaning of that enactment: *Hall v. Brand*, 12 Q. B. D. 39.

*Reference under s. 56.*—There is power under S. C. Jud. Act, 1873, s. 56, to order an inquiry by examination of witnesses: *The Baroness Wenlock v. River Dee Co.*, 19 Q. B. D. 155.

**50.** Subject to any such order as last aforesaid, the Referee shall have the same authority with respect to discovery and production of documents, and in the conduct of any reference or trial, and the same power to direct that judgment be entered for any or either party, as a Judge of the High Court.

*Effect of Rule.*—This rule effects an important extension of the Referee's powers, and enables him to direct judgment to be entered, and to order discovery of documents. Under the repealed rules a Referee had no authority to enter judgment: *Mellin v. Monico*, 3 C. P. D. 142; or to order the production of documents: *Dauvillier v. Myers*, 17 Ch. D. 346.

*Judgment.*—For form of judgment after trial before Referee, see App. F, No. 8, *post*, p. 587. As to moving to set aside his judgment, see O. XL., r. 6, *post*, p. 335.

**51.** Nothing in these Rules contained shall authorize any Referee to commit any person to prison or to enforce any order by attachment or otherwise.

**52.** The Referee may, before the conclusion of any trial before him, or by his report under the reference made to him, submit any question arising therein for the decision of the Court, or state any facts specially, with power to the Court to draw inferences therefrom, and in any such case the order to be made on such submission or statement shall be entered as the Court may direct; and the Court shall have power to require any explanation or reasons from the Referee, and to remit the cause or matter, or any part thereof, for re-trial or further consideration to the same or any other Referee; or the Court may decide the question referred to any Referee on the evidence taken before him, either with or without additional evidence as the Court may direct.

*Effect of Rule.*—The powers given by this rule are analogous to, but more extensive than, those conferred by s. 5 of the C. L. P. Act, 1854, *ante*, p. 290. That section simply enabled an arbitrator to state his award as to the whole or any part thereof in the form of a special case for the opinion of the Court. And the Court could only deal with the case as stated. Under this rule the Court may require of the Referee explanations or reasons, or send the matter back for re-trial or reconsideration, and to another Referee if it thinks fit. The Court, too, may enter the order of the Court as it thinks fit.

See rules 48 and 50, and notes thereto as to the increased powers given to Referees by these rules. And see S. C. Jud. Act, 1884, s. 9, *ante*, p. 116, as to trials of actions by Official Referees.

*Effect of report of Referee.*—Under S. C. Jud. Act, 1873, s. 58, the report of the Referee, where the reference is ordered under s. 57, is equivalent to a verdict, and application may be made for a new trial, or to set aside the verdict as given by mistake, or as against the evidence, at any time before judgment has been given on it: *Walker v. Bunkell*, 22 Ch. D. 722, at p. 726; *Bedborough v. Army & Navy Hotel Co.*, 53 L. J. Ch. 658. The practice as laid down in *Dyke v. Cannell*, 11 Q. B. D. 180, is not altered by the Rules of 1883. The application must, in the Queen's Bench Division, be to a Divisional Court: *Cooke v. Newcastle Co.*, 10 Q. B. D. 332.

Ord. XXXVI.  
rr. 49—52.

474.  
Authority and  
power of  
Referee.  
[Cf. O.  
XXXVI.  
r. 32.]

475.  
No power in  
Referee to  
commit.  
[O. XXXVI.  
r. 33.]  
476.  
Report of  
Referee.  
[O. XXXVI.  
r. 34.]



**Ord. XXXVI.**  
**rr. 52—56.**

*Contents of report.*—A Referee is not bound to give the reasons for his findings, and the issues cannot be sent back to him for re-trial or further consideration on account of the reasons for the findings not being set out: *Miller v. Pilling*, 9 Q. B. D. 736. But the Referee should state the facts upon which his report is based: *Mayor of Birmingham v. Allen*, W. N. (1877), 190. And on a reference of an account the report must give the items allowed and disallowed: *Burrard v. Calisher*, 51 L. J. Ch. 223.

*Adopting or varying report.*—As to applications to adopt or vary the report of a Referee, see rules 54, 55, *infra*, and *Cooke v. Newcastle Co.*, 10 Q. B. D. 332, decided upon the repealed rules.

477.  
Notice of  
report of  
Referee.

**53.** Whenever a report shall be made by a Referee, he shall on the same day cause notice thereof to be given to all the parties to the trial or the reference before him by prepaid post letter directed to the address for service of each party, who shall in due course of post be deemed to have notice of such report.

This rule was introduced in 1883.

478.  
Adoption, &c.,  
of report on  
further consi-  
deration.

**54.** Where under the fifty-sixth section of the principal Act the report of the Referee has been made in a cause or matter, the further consideration of which has been adjourned, it shall be lawful for any party, on the hearing of such further consideration, without notice of motion or summons, to apply to the Court or Judge to adopt the report, or without leave of the Court or a Judge to give not less than *four days'* notice of motion, to come on with the further consideration, to vary the report or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other Referee.

*Effect of Rule.*—This and the succeeding rule were introduced in 1883 and regulate the practice as to moving to adopt, vary, or set aside a referee's report. Under the repealed rules a difficulty arose owing to the absence of any specific provision on the subject: *Burrard v. Calisher*, 19 Ch. D. 644; *Walker v. Bunkell*, 22 Ch. D. 722, at p. 724.

The present rule applies to cases where the further consideration has been adjourned. The next succeeding rule applies to other cases.

479.  
Adoption, &c.  
of report  
where no  
further con-  
sideration  
reserved.

**55.** Where under the fifty-sixth section of the principal Act the report of the Referee has been made in a cause or matter, the further consideration of which has not been adjourned, it shall be lawful for any party by an *eight days'* notice of motion to apply to the Court to adopt and carry into effect the report of the Referee, or to vary the report, or to remit the cause or matter or any part thereof for re-hearing or further consideration to the same or any other Referee.

See note to last rule.

*Time for application.*—The computation of time for moving for a new trial does not apply to motions to set aside the report of a Referee: *Dyke v. Cannell*, 11 Q. B. D. 180. See also *Bedborough v. Army and Navy Hotel Co.*, 53 L. J., Ch. 658.

### IX. *Writ of Inquiry and Reference as to Damages.*

480.  
Proceedings  
on writ of  
inquiry.

**56.** The provisions of Rules 14, 15, 19, 34, 35, 36, and 37 of this Order, shall, with the necessary modifications, apply to an inquiry, pursuant to a writ of inquiry.

*Writ of inquiry.*—As to a writ of inquiry upon default of appearance and default of pleading, see O. XIII., r. 5; O. XXVII., r. 4, *ante*, pp. 164, 238.

For proceedings on a writ of inquiry before the sheriff, see Chitt. Arch., pp. 1326—1340. For form of writ, see App. J, No. 8, *post*, p. 607.

The provisions here referred to are those which relate to notice and entry of trial, countermand of notice of trial, adjournment of trial, *habeas corpus*, speeches of counsel, and evidence in mitigation of damages in libel and slander.

Ord. XXXVI.  
rr. 56—58.

57. In every action or proceeding in the Queen's Bench Division in which it shall appear to the Court or a Judge that the amount of damages sought to be recovered is substantially a matter of calculation, it shall not be necessary to issue a writ of inquiry, but the Court or a Judge may direct that the amount for which final judgment is to be entered shall be ascertained by an officer of the Court, and the attendance of witnesses and the production of documents before such officer may be compelled by *subpœna*, and such officer may adjourn the inquiry from time to time, and shall indorse upon the order for referring the amount of damages to him the amount found by him, and shall deliver the order with such indorsement to the person entitled to the damages, and such and the like proceedings may thereupon be had as to taxation of costs, entering judgment, and otherwise, as upon the finding of a jury upon a writ of inquiry.

481.  
Inquiry of  
damages  
before officer  
of Court.

*Effect of Rule.*—This rule was introduced in 1883, and reproduces in effect the provisions of s. 94 of the C. L. P. Act, 1852, with the exception that the general term Officer of the Court is substituted for Master.

58. Where damages are to be assessed in respect of any continuing cause of action, they shall be assessed down to the time of the assessment.

482.  
Assessment of  
damages for  
continuing  
wrong.

*Effect of Rule.*—In *Fritz v. Hobson*, 14 Ch. D. 542, it was held that by virtue of s. 2 of the 21 & 22 Viet. c. 27, damages might be assessed at the trial down to the date of judgment. This rule appears to generalise the principle there laid down.

## ORDER XXXVII.

Ord. XXXVII.  
r. 1.

### I.—EVIDENCE GENERALLY.

1. In the absence of any agreement in writing between the solicitors of all parties, and subject to these Rules, the witnesses at the trial of any action or at any assessment of damages shall be examined *vivâ voce* and in open Court, but the Court or a Judge may at any time for sufficient reason order that any particular fact or facts may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial, on such conditions as the Court or Judge may think reasonable, or that any witness whose attendance in Court ought for some sufficient cause to be dispensed with be examined by interrogatories or otherwise before a commissioner or examiner; provided that, where it appears to the Court or Judge that the other party *bonâ fide* desires the production of a witness for cross-examination, and that such witness can be produced, an order shall not be made authorizing the evidence of such witness to be given by affidavit.

483.  
Mode of  
giving evi-  
dence at trial.  
[O. XXXVII.  
r. 1.]

Cross-exami-  
nation.

*Effect of Rule.*—This rule is identical with the repealed O. XXXVII., r. 1, with the exception that the words "solicitors or parties," are substituted for



**Ord. XXXVII.** "parties," in the commencement of the rule, and that the agreement is required to be in writing.  
**rr. 1, 2.**

*Effect of Jud. Act on mode of giving evidence, &c.*—See S. C. Jud. Act, 1875, s. 20, *ante*, p. 76.

#### **AFFIDAVIT EVIDENCE.**

*Agreement.*—The agreement mentioned in this rule must be a formal consent in writing: *New Westminster Brewery Co. v. Hannah*, 1 Ch. D. 278. A party who unreasonably refused to admit evidence by affidavit was ordered to pay costs: *Patterson v. Wooler*, 2 Ch. D. 586. Consent may be given by the guardian *ad litem* of an infant defendant without the leave of the Court: *Knatchbull v. Fowle*, 1 Ch. D. 604; *Fryer v. Wiseman*, 24 W. R. 205. Where evidence has been taken by affidavits by consent, the Court has power to refuse to allow the affidavits to be read, and to order the witnesses to be examined orally: *Lovell v. Wallis*, 53 L. J., Ch. 494. As to applying to be relieved from an agreement to take evidence by affidavit, where a party finds himself unable to procure affidavit evidence, see *Warner v. Mosses*, 16 Ch. D. 100. As to supplementing by *vivâ voce* evidence the evidence given by affidavit, see *Glossop v. Heston Local Board*, 47 L. J. Ch. 536.

*Time for filing affidavits.*—See O. XXXVIII., rr. 25—27, *post*, pp. 326, 327.

*Cross-examination.*—See O. XXXVIII., rr. 28, 29, *post*, p. 327.

*Printing.*—See O. XXXVIII., r. 30, *post*, p. 328.

*Cases in which evidence by affidavit rejected.*—The fact that an affidavit has been used on motion, or other interlocutory application, gives no right to read it at the trial: *Perkins v. Slater*, 1 Ch. D. 83; *Blackburn Union v. Brooks*, 7 Ch. D. 68. Proof of a will in solemn form by affidavit was refused, though the property was very small, and none of the parties cited had appeared: *Cook v. Tomlinson*, 24 W. R. 851. In *A.-G. v. Metropolitan Ry. Co.*, 5 Ex. D. 218, the Court declined to allow an information against the company to recover passenger duty to be tried on affidavit.

*Proof of particular facts by affidavit.*—See *Macdonald v. Antelme*, W. N. (1884), 72. Where in an action for revocation of probate one of the attesting witnesses could not be traced, Butt, J. (though with hesitation), under this rule allowed an affidavit made by the witness eight years previously for the purpose of obtaining probate to be read as evidence in support of the will: *Gornall v. Mason*, 57 L. T. 601. An affidavit used on a motion in the cause by a witness unable to attend the hearing was allowed to be put in evidence, the application being treated as made before the trial under this rule: *Drewitt v. Drewitt*, 58 L. T. 684.

*Fresh evidence.*—Fresh evidence may properly be admitted at any stage of an action, when a party has been taken by surprise: *Bigsby v. Dickenson*, 4 Ch. D. 24. As to fresh evidence before the Court of Appeal, see O. LVIII. r. 4, and notes thereto, *post*, p. 438.

*Evidence on further consideration.*—Under this rule, the Court may, in an administration action, after filing of the chief clerk's certificate, receive, if it thinks fit, fresh evidence on further consideration: *May v. Newton*, 34 Ch. D. 347; see also *Re Michael*, 52 L. T. 609; *Re Revill*, 55 L. T. 542.

*Production of witness for cross-examination.*—Where one party desires the production of a witness for cross-examination, the Court cannot order an affidavit used on a previous interlocutory application to be read at the trial: *Blackburn Union v. Brooks*, 7 Ch. D. 68.

**EVIDENCE VIVÂ VOCE.**—In the absence of (a) agreement to take evidence by affidavit, (b) order to prove particular facts by affidavit, (c) order for examination by interrogatories or before a commissioner or examiner, the witnesses will be examined *vivâ voce* and in open Court: see *Warner v. Mosses*, 16 Ch. D. 100, at p. 101.

*Treating witness as hostile.*—The discretion given to the Judge under s. 22 of C. L. P. Act, 1854, is absolute, and the C. A. has no jurisdiction to review his decision: *Rice v. Howard*, 16 Q. B. D. 681.

**2.** In default actions *in rem*, and in references in Admiralty actions, evidence may be given by affidavit.

*Effect of Rule.*—This rule was introduced in 1883. It preserved what had



previously been the practice in default actions and references in Admiralty: see *The Sfactoria*, 2 P. D. 3. Ord. XXXVII.  
rr. 2—5.

As to the procedure in default actions, see O. XIII., rr. 12, 13, *ante*, pp. 165, 166; in references, O. LVI., *post*, p. 427.

*Cross-examination.*—On a reference to the Registrar and Merchants, the Registrar has a discretion whether or not he will give effect to an affidavit made by one of the parties resident abroad who declines to attend the reference to be cross-examined on his affidavit: *The Parisian*, 13 P. D. 16.

3. An order to read evidence taken in another cause or matter shall not be necessary, but such evidence may, saving all just exceptions, be read on *ex parte* applications by leave of the Court or a Judge, to be obtained at the time of making any such application, and in any other case upon the party desiring to use such evidence giving two days' previous notice to the other parties of his intention to read such evidence.

485.

Evidence in another cause to be read without order.

*Effect of Rule.*—This rule was introduced in 1833. According to the previously existing practice, it was necessary to obtain an order before evidence taken in another cause or matter could be read: see C. O. XIX., rr. 4, 5. Affidavits sworn in one suit were admitted as evidence in another, where the parties in the two suits were privies in estate, the issue in the two suits being the same: *Llanover v. Homfray*, 19 Ch. D. 224; see, also, *Brown v. White*, 24 W. R. 456; *Re Woolley's Trusts*, *ibid.* 783. For the principles on which the Court acts in allowing evidence sworn in one suit to be read in another, see Dan. Pr., pp. 596 *et seq.*

4. Office copies of all writs, records, pleadings, and documents filed in the High Court of Justice shall be admissible in evidence in all causes and matters and between all persons or parties, to the same extent as the original would be admissible.

486.

Office copies admissible.

This rule was introduced in 1833.

See as to office copies of documents under the seal of the Central Office, O. LXI., r. 7, *post*, p. 457.

## II.—EXAMINATION OF WITNESSES.

5. The Court or a Judge may, in any cause or matter where it shall appear necessary for the purposes of justice, make any order for the examination upon oath before the Court or Judge, or any officer of the Court, or any other person and at any place, of any witness or person, and may empower any party to any such cause or matter to give such deposition in evidence therein on such terms, if any, as the Court or a Judge may direct.

487.

Depositions. [Cf. O. XXXVII. r. 4.]

*Effect of Rule.*—This rule is almost identical with the repealed O. XXXVII., r. 4. It is a repetition in somewhat different language of 1 Will. IV. c. 22, s. 4, the statute under which the Common Law Courts had power to order the depositions of witnesses to be taken. The repealed Rules contained no provisions regulating the practice as to the examination of witnesses. In the Queen's Bench Division, the practice was regulated by 1 Will. IV. c. 22, as amended by the C. L. P. Act, 1854, ss. 46, 47, 55, 56. In the Chancery Division the practice was regulated by 15 & 16 Vict. c. 86, ss. 30—41. The two practices differed in many particulars. By rules 6 to 25 of this Order an uniform practice is now provided for all Divisions, adopting in some respects the Common Law, and in other respects the Chancery rules.

*"Witness or person."*—Under this rule a party to the cause may be examined: *Nadin v. Bassett*, 25 Ch. D. 21. The rule applies only to the examination of witnesses in matters where there is a pending litigation between contesting parties: *Ex parte Hewitt*, 15 Q. B. D. 159, at p. 163.

Ord. XXXVII.  
r. 5.

**COMMISSION TO EXAMINE WITNESSES.**—Upon an application for a commission to take the evidence of a witness who is abroad, the Court ought to be satisfied that the application is made *bonâ fide*, and that the claim in support of which the evidence is desired is one which the Court ought to try, but it ought not to go any further into the merits of the claim: *Re Boyse*, 20 Ch. D. 760. "A commission should not be a mere roving commission to give a party a chance of finding evidence abroad": *Armour v. Walker*, 25 Ch. D. 673, at p. 677, per Cotton, L. J. A commission is a matter of judicial discretion, and will not be granted *ex debito justitiæ*: *Coch v. Allcock*, 21 Q. B. D. 178. It is no objection to granting a commission, that the witness has an interest in the result of the litigation, if there is no reason to suppose that he is keeping out of the way to avoid cross-examination: *Langen v. Tate*, 24 Ch. D. 522. Where it is important that the witness should be examined here, the party asking to have him examined abroad must show clearly that he cannot bring him to this country to be examined at the trial: *Lawson v. Facum Brake Co.*, 27 Ch. D. 137 (see this case explained in *Coch v. Allcock*, 21 Q. B. D. 1); see, also, *Nadin v. Bassett*, 25 Ch. D. 21. In the absence of special circumstances, there is no objection to the evidence of a plaintiff resident abroad being taken by commission: *Armour v. Walker*, 25 Ch. D. 673; *Banque Franco-Egyptienne v. Leutscher*, 28 W. R. 133. But a plaintiff who desires to be examined on commission must make out a strong *primâ facie* case why he should not attend and be examined at the trial. There ought to be an affidavit by the plaintiff himself showing strong and positive reasons for his not attending to be examined at the trial: *Light v. Governor of the Island of Acosti*, 58 L. T. 25. But, in a later case, it was said by Lord Esher, M. R., that the rule is the same with regard to a plaintiff as with regard to any other witness, but it will be more strictly applied: *Coch v. Allcock*, 21 Q. B. D. 178. Applications for commissions have been refused where the Court was convinced that the witness was keeping out of the way to avoid cross-examination: *Berdan v. Greenwood*, 20 Ch. D. 764, n.; where it appeared that under the procedure of the foreign Court the witness could not be subjected to cross-examination: *Re Boyse*, *ubi sup.*; where it was proposed to examine witnesses to prove foreign law, and it was not shown that it could not be readily proved by witnesses at the trial: *The M. Mozham*, 1 P. D. 107; where the commission was not asked for in reasonable time: *Steuart v. Gladstone*, 7 Ch. D. 394.

*Practice.*—See Dan. Pr., pp. 647—653; Dan. Forms, pp. 293—298; Chitt. Arch., pp. 545—554; Chitt. Forms, pp. 310—323.

**EXAMINATION DE BENE ESSE.**—The order may be obtained *ex parte*; but the Court is not precluded from discharging such an order on the application of a party dissatisfied with it, if a case for doing so is made out: *Bidder v. Bridges*, 26 Ch. D. 1. In that case the Court refused to allow the examination *de bene esse* of a large number of witnesses merely on the ground that they were seventy years old and upwards. The order was allowed to stand as to witnesses of the age of seventy-five and upwards, upon an undertaking by the plaintiffs to produce such witnesses at the trial if alive and capable of giving evidence, and if so required by the defendant. In an ordinary case, however, the fact of a witness being seventy years of age is a good *primâ facie* ground for an order: see per Selborne, L. C., *Bidder v. Bridges*, at p. 9. The evidence of the witness should not be taken *ex parte*: *Warner v. Mosses*, 16 Ch. D. 100.

*Practice.*—See Dan. Pr., pp. 653—659; Dan. Forms, pp. 313—315; Chitt. Arch., pp. 533—545; Chitt. Forms, pp. 299—309.

*Affidavit in support of application.*—"The defendant ought to state specifically what information as to the age of the witness he has received, and what means have been taken to inquire in the best quarters, upon that subject, and on what his belief is founded": per Selborne, L. C., *Bidder v. Bridges*, *ubi sup.*, at p. 11.

*Form of order.*—See 2 Seton, p. 1635. In *Burton v. North Staffordshire Ry. Co.*, 35 W. R. 536, Kay, J., stated his opinion that the words appearing in the form "and it is ordered that the plaintiff be at liberty to give such depositions in evidence at the trial of this action," ought not to be inserted, for at the trial the witness might be capable of being examined.

*Form of order for examination of witnesses before trial.*—See App. K, No. 35, *post*, p. 621.

*Examiners of the Court.*—See Part V. of this Order.



**6.** An order for a commission to examine witnesses shall be in the Form No. 36, in Appendix K, and the writ of commission shall be in the Form No. 13 in Appendix J, with such variations as circumstances may require. Ord. XXXVII.  
rr. 6—9.

For forms, see *post*, pp. 608, 621. See, also, App. K, No. 37. The forms are substantially the same as those of the repealed rules.

*Single Commissioner.*—When a single commissioner is appointed he should be authorized by the commission to administer the oath to himself: *Wilson v. De Coulon*, 22 Ch. D. 841.

*Names of witnesses.*—It is not necessary that the names of all the witnesses should be mentioned in the commission: *Nadin v. Bassett*, 25 Ch. D. 21.

*Commission addressed to Court not in existence.*—Evidence taken under a commission addressed to “The Judges of the Supreme Court at Calcutta,” (which was abolished in 1861) and executed under the authority of a Judge of “The High Court of Judicature at Fort William in Bengal,” was received: *Wilson v. Wilson*, 9 P. D. 8.

**6A.** If in any case the Court or a Judge shall so order, there shall be issued a request to examine witnesses in lieu of a commission. The Forms 1 and 2 in the Appendix hereto shall be used for such order and request respectively, with such variation as circumstances may require, and may be cited as Forms 37A and 37B in Appendix K. 488.  
488 a.  
Request to  
examine in  
lieu of com-  
mission.

This rule was introduced in 1884. For the forms, see *post*, p. 623. The rule and forms meet a difficulty which was found to arise where the Court had issued an ordinary commission to have a witness examined abroad.

**7.** The Court or a Judge may in any cause or matter at any stage of the proceedings order the attendance of any person for the purpose of producing any writings or other documents named in the order which the Court or Judge may think fit to be produced: Provided that no person shall be compelled to produce under any such order any writing or other document which he could not be compelled to produce at the hearing or trial. 489.  
Production  
before trial.

This rule reproduces in effect provisions contained in 1 Will. IV. c. 22, s. 5, and in ss. 46, 47 of the C. L. P. Act, 1854.

*Production by person not a party.*—In *The Central News Co. v. Eastern News Telegraph Co.*, 53 L. J., Q. B. 236, the Court declined to order the production of documents before trial by a person not a party.

**8.** Any person wilfully disobeying any order requiring his attendance for the purpose of being examined or producing any document, shall be deemed guilty of contempt of Court, and may be dealt with accordingly. 490.  
Disobedience  
to order for  
production.

This rule reproduces in effect a provision contained in 1 Will. IV. c. 22, s. 5.

**9.** Any person required to attend for the purpose of being examined or of producing any document, shall be entitled to the like conduct-money and payment for expenses and loss of time as upon attendance at a trial in Court. 491.  
Expenses of  
witness.

Cf. 1 Will. IV. c. 22, s. 5.

*Expenses of witnesses.*—See Dan. Pr., p. 643, and cases collected there, n. (p); Morgan, p. 424. In *Re Working Men's Mutual Society*, 21 Ch. D. 831, an auctioneer summoned to give evidence before a special examiner was held entitled to one guinea *per diem* and travelling expenses.



Ord. XXXVII.  
rr. 10—13.

492.

Documents to  
be furnished to  
examiner.

10. Where any witness or person is ordered to be examined before any officer of the Court, or before any person appointed for the purpose, the person taking the examination shall be furnished by the party on whose application the order was made with a copy of the writ and pleadings, if any, or with a copy of the documents necessary to inform the person taking the examination of the questions at issue between the parties.

This rule reproduces, with necessary modifications, provisions contained in the 15 & 16 Vict. c. 86, s. 31.

493.

Conduct of  
examination.

11. The examination shall take place in the presence of the parties, their counsel, solicitors, or agents, and the witnesses shall be subject to cross-examination and re-examination.

This rule is taken from the 15 & 16 Vict. c. 86, s. 31.

*Office of examiner.*—An examiner's office is not a public Court: *Re Western of Canada Oil Co.*, 6 Ch. D. 109; and see *Re Cambrian Co.*, 20 Ch. D. 376.

494.

Deposition  
how taken and  
signed.

12. The depositions taken before an officer of the Court, or before any other person appointed to take the examination, shall be taken down in writing by or in the presence of the examiner not ordinarily by question and answer, but so as to represent as nearly as may be the statement of the witness, and when completed shall be read over to the witness and signed by him in the presence of the parties, or such of them as may think fit to attend. If the witness shall refuse to sign the depositions, the examiner shall sign the same. The examiner may put down any particular question or answer if there should appear any special reason for doing so, and may put any question to the witness as to the meaning of any answer, or as to any matter arising in the course of the examination. Any questions which may be objected to shall be taken down by the examiner in the depositions, and he shall state his opinion thereon to the counsel, solicitors, or parties, and shall refer to such statement in the depositions, but he shall not have power to decide upon the materiality or relevancy of any question.

This rule reproduces in effect the provisions of 15 & 16 Vict. c. 86, s. 32.

*Priority of witnesses.*—The order in which the witnesses are to be examined is in the discretion of the examiner: *Stuart v. Balkis Co.*, 32 W. R. 676.

*Hostile witness.*—It was held under the provisions of 15 & 16 Vict. c. 86, s. 32, that the examiner had power to decide whether a witness might be treated as a hostile witness. See *Ohlsen v. Terrero*, 10 Ch. 127.

*Deposition not in examiner's handwriting.*—In *Bolton v. Bolton*, 2 Ch. D. 217, Hall, V.-C., allowed a deposition to be read though not taken down in the examiner's handwriting, contrary to the then Chancery practice under the above Act and section. In the Common Law Courts it was never required that the evidence should be in the examiner's handwriting.

495.

Refusal of  
witness to  
attend or be  
sworn.

13. If any person duly summoned by *subpœna* to attend for examination shall refuse to attend, or if, having attended, he shall refuse to be sworn or to answer any lawful question, a certificate of such refusal, signed by the examiner, shall be filed at the Central Office, and thereupon the party requiring the attendance of the witness may apply to the Court or a Judge *ex parte* or on notice for

an order directing the witness to attend, or to be sworn, or to answer any question, as the case may be. Ord. XXXVII.  
rr. 13—17.

This rule reproduces part of 15 & 16 Vict. c. 86, s. 33.

*Enforcing attendance of witness.*—Where an order has been made for taking the examination of a witness before an examiner, and the witness fails to attend, or refuses to be sworn, the proper course is not to move to commit him for contempt, but first to serve him with a *subpoena*, and then to move for an order that he attend at his own expense: *Stuart v. Balkis Co.*, 32 W. R. 676. But the rule that, before a motion can be made to compel a witness to attend at his own expense, he must be served with a *subpoena*, does not apply to the case of an official liquidator, who, as an officer of the Court, is not entitled to raise the technical objection: *Re General Financial Bank*, W. N. (1888), 47.

*Certificate not taken up.*—Where an examiner's certificate has not been taken up, its effect will not be allowed to be stated in Court: *Stuart v. Balkis Co.*, *ubi sup.*

*Disobedience to Chief Clerk's summons.*—Before a writ of attachment can be issued for disobedience to attend on a chief clerk's summons, an order under this rule should be made: *Powell v. Nevitt*, 55 L. T. 728.

14. If any witness shall object to any question which may be put to him before an examiner, the question so put, and the objection of the witness thereto, shall be taken down by the examiner, and transmitted by him to the Central Office to be there filed, and the validity of the objection shall be decided by the Court or a Judge. 496.  
Objection of  
witness to  
answer.

This and the following rule reproduce provisions contained in 15 & 16 Vict. c. 86, s. 33.

*Practice.*—See Dan. Pr., pp. 659—662; Dan. Forms, p. 316.

15. In any case under the two last preceding Rules, the Court or a Judge shall have power to order the witness to pay any costs occasioned by his refusal or objection. 497.  
Order on  
witness to pay  
costs.

See note to last rule.

16. When the examination of any witness before any examiner shall have been concluded, the original depositions, authenticated by the signature of the examiner, shall be transmitted by him to the Central Office, and there filed. 498.  
Transmission  
of depositions.

This rule reproduces the provisions of 15 & 16 Vict. c. 86, s. 34.

*Signature of examiner.*—See Dan. Pr., pp. 645, 646. Depositions taken before an examiner who had died before affixing his signature to them were allowed to be received in evidence: *Bryson v. Warwick and Birmingham Canal Co.*, 1 W. R. 124; *Felthouse v. Bailey*, 14 W. R. 827. Where the examiner omits to sign the depositions, the Court has power, if it thinks fit, to order them to be filed: *Stephens v. Wanklin*, 19 Beav. 585.

*Transmitting depositions by examiner.*—See *Clark v. Gill*, 1 K. & J. 19. Where objection was taken to the line of cross-examination before the examiner, a motion that the examiner might be ordered to transmit the depositions to the Central Office was refused, *North, J.*, holding that he could look at the depositions without their being filed: *Maple v. Stevenson*, W. N. (1888), 62.

17. The person taking the examination of a witness under these Rules may, and if need be shall, make a special report to the Court touching such examination and the conduct or absence of any witness or other person thereon, and the Court or a Judge may direct 499.  
Special report



**Ord. XXXVII.** such proceedings, and make such order as upon the report they or  
**rr. 17—20.** he may think just.

This rule is taken from 1 Will. IV. c. 22, s. 8; and the C. L. P. Act, 1854, ss. 55 and 56, and substantially preserves what was the Common Law practice.

500.  
 Depositions  
 when given in  
 evidence.

**18.** Except where by this order otherwise provided, or directed by the Court or a Judge, no deposition shall be given in evidence at the hearing or trial of the cause or matter without the consent of the party against whom the same may be offered, unless the Court or Judge is satisfied that the deponent is dead, or beyond the jurisdiction of the Court, or unable from sickness or other infirmity to attend the hearing or trial, in any of which cases the depositions certified under the hand of the person taking the examination shall be admissible in evidence, saving all just exceptions, without proof of the signature to such certificate.

*Effect of Rule.*—This rule reproduces the provisions of 1 Will. IV. c. 22, s. 10. It was held under this Act that the affidavit of the witness's ordinary medical attendant was sufficient evidence, and that the Court would not interfere with the discretion of the Judge unless he had been misled by false evidence: *Beaufort v. Crawshaw*, L. R., 1 C. P. 699. The above section differed from the present rule in containing the words "permanent" infirmity and sickness,—which it was held meant such as to preclude the hope of the deponent attending the trial within a reasonable time: *Ibid*.

501.  
 Oaths.

**19.** Any officer of the Court or other person directed to take the examination of any witness or person may administer oaths.

This rule reproduces the provisions of 15 & 16 Vict. c. 86, s. 35.

502.  
 Subpœna for  
 attendance of  
 witness.

**20.** Any party in any cause or matter may by *subpœna ad testificandum* or *duces tecum* require the attendance of any witness before an officer of the Court or other person appointed to take the examination for the purpose of using his evidence upon any proceeding in the cause or matter in like manner as such witness would be bound to attend and be examined at the hearing or trial; and any party or witness having made an affidavit to be used or which shall be used on any proceeding in the cause or matter shall be bound on being served with such *subpœna* to attend before such officer or person for cross-examination.

This rule is taken from 15 & 16 Vict. c. 86, s. 40.

*Subpœna: when it may issue.*—A *subpœna ad testificandum* may be issued at any stage of an action without leave: *Raymond v. Tapson*, 22 Ch. D. 430; but the Court has jurisdiction to refuse to allow cross-examination when it would be an abuse to allow it: *Fenton v. Cumberlege*, W. N. (1883), 116; *Raymond v. Tapson*, *ubi supra*.

*Compelling attendance before examiner.*—A witness required to attend before an examiner is not bound to attend unless served with a *subpœna*: *Stuart v. Balkis Co.*, 53 L. J., Ch. 791.

*Affidavits open to cross-examination.*—See Morgan, p. 427, where the cases are collected.

*Withdrawal of affidavit.*—An affidavit cannot be withdrawn so as to avoid cross-examination: *Re Quartz Hill Co.*, 21 Ch. D. 642; *Massam v. Thorley's Cattle Food Co.*, W. N. (1879), 181; *Prole v. Soady*, 3 Ch. 220; *Clarke v. Law*, 2 K. & J. 28.

*Cross-examination not completed.*—The fact that a cross-examination on an affidavit is not concluded does not prevent the Court from looking at the affidavit: *Lewis v. James*, 32 Ch. D. 326.

*Deponent not produced for cross-examination.*—See O. XXXVIII., r. 28, *post*, p. 327; Dan. Pr., p. 637, n. (c); Morgan, p. 428, and cases there cited.



**21.** Evidence taken subsequently to the hearing or trial of any cause or matter shall be taken as nearly as may be in the same manner as evidence taken at or with a view to a trial.

Ord. XXXVII.  
rr. 21—27.

This rule is taken from 15 & 16 Vict. c. 86, s. 48.

503.

Evidence subsequent to trial.

**22.** The practice with reference to the examination, cross-examination, and re-examination of witnesses at a trial shall extend and be applicable to evidence taken in any cause or matter at any stage.

504.

Practice on examinations.

This rule is taken from C. O. XIX., r. 10, and 15 & 16 Vict. c. 86, s. 31.

*Effect of Rule.*—The effect of this rule, taken in conjunction with O. XXXVIII., r. 28, is that the expenses of production of a witness for cross-examination upon affidavit before a trial, must be borne in the first instance by the party producing such witness: *Mansel v. Clanricarde*, 54 L. J., Ch. 982. As to the effect of this rule upon affidavits used on inquiries at chambers, see note to O. XXXVIII., r. 28, *post*, p. 327.

**23.** The practice of the Court with respect to evidence at a trial, when applied to evidence to be taken before an officer of the Court or other person in any cause or matter after the hearing or trial, shall be subject to any special directions which may be given in any case.

505.

Special directions as to evidence.

This rule is taken from C. O. XIX., r. 11.

**24.** No affidavit or deposition filed or made before issue joined in any cause or matter shall without special leave of the Court or a Judge be received at the hearing or trial thereof, unless within *one month* after issue joined, or within such longer time as may be allowed by special leave of the Court or a Judge, notice in writing shall have been given by the party intending to use the same to the opposite party of his intention in that behalf.

506.

Notice to use deposition or affidavit.

This rule is taken from C. O. XIX., r. 12.

**25.** All evidence taken at the hearing or trial of any cause or matter may be used in any subsequent proceedings in the same cause or matter.

507.

Evidence in subsequent proceedings.

This rule is taken from the Chancery Regulation, 5 Feb., 1861, r. 15.

### III.—SUBPENA.

**26.** Where it is intended to sue out a *subpæna*, a *præcipe* for that purpose, in the Form No. 21, in Appendix G, and containing the name or firm and the place of business or residence of the solicitor intending to sue out the same, and, where such solicitor is agent only, then also the name or firm and place of business or residence of the principal solicitor, shall in all cases be delivered and filed at the Central Office.

508.

Præcipe for subpæna.

This rule is taken from C. O. XXVIII., r. 1.

For the form referred to, see *post*, p. 594.

*Witnesses out of jurisdiction.*—As to compelling the attendance of witnesses out of the jurisdiction, see S. C. Jud. Act, 1884, s. 16, *ante*, p. 118.

**27.** A writ of *subpæna* shall be in one of the Forms 1 to 7 in Appendix J, with such variations as circumstances may require.

509.

Subpæna.

This rule is taken from C. O. XXVIII., r. 2.

For the forms referred to, see *post*, pp. 605, 606.

Ord. XXXVII.  
rr. 28—35.

510.

Where issued.

28. Where a *subpæna* is required for the attendance of a witness for the purpose of proceedings in Chambers, such *subpæna* shall issue from the Central Office upon a note from the Judge.

This rule is taken from C. O. XXXV., r. 29.

511.

Number of  
names.

29. Every *subpæna* other than a *subpæna duces tecum* shall contain three names where necessary or required, but may contain any larger number of names.

This rule is taken from C. O. XXVIII., r. 3.

512.

Number in  
*subpæna*.

30. No more than three persons shall be included in one *subpæna duces tecum*, and the party suing out the same shall be at liberty to sue out a *subpæna* for each person if it shall be deemed necessary or desirable.

This rule is taken from C. O. XXVIII., r. 4.

*Contents of subpæna.*—As to the degree of particularity with which the documents must be described, see *A.-G. v. Wilson*, 9 Sim. 526; *Newland v. Steer*, 13 W. R. 1014; *Lee v. Angus*, 2 Eq. 59; *Dan. Pr.*, p. 641, n. (c); *Morgan*, p. 429.

513.

Correction of  
errors.

31. In the interval between the suing out and service of any *subpæna* the party suing out the same may correct any error in the names of parties or witnesses, and may have the writ re-sealed upon leaving a corrected *præcipe* of such *subpæna* marked with the words "altered and re-sealed," and signed with the name and address of the solicitor suing out the same.

This rule is taken from C. O. XXVIII., r. 5.

514.

Service.

32. The service of a *subpæna* shall be effected by delivering a copy of the writ, and of the endorsement thereon, and at the same time producing the original writ.

This rule is taken from C. O. XXVIII., r. 6.

*Service of writs, &c.*—See O. LXVII., r. 5, *post*, p. 507.

515.

Affidavits of  
service.

33. Affidavits filed for the purpose of proving the service of a *subpæna* upon any defendant must state when, where, and how, and by whom, such service was effected.

This rule is taken from C. O. XXVIII., r. 8.

Compare O. LXVII., r. 9, *post*, p. 508.

516.

Duration of  
*subpæna*.

34. The service of any *subpæna* shall be of no validity if not made within twelve weeks after the *teste* of the writ.

This rule is taken from C. O. XXVIII., r. 9.

*Teste of writs.*—See O. II., r. 8, *ante*, p. 131.

#### IV.—PERPETUATING TESTIMONY.

517.

Action to  
perpetuate  
testimony.

35. Any person who would under the circumstances alleged by him to exist become entitled upon the happening of any future event to any honour, title, dignity, or office, or to any estate or

interest in any property, real or personal, the right or claim to which cannot by him be brought to trial before the happening of such event, may commence an action to perpetuate any testimony which may be material for establishing such right or claim. Ord. XXXVII.  
rr. 35—39.

5 & 6 Vict. c. 69.—This rule and the next are taken from 5 & 6 Vict. c. 69, ss. 1, 2, now repealed, which regulated suits in the Court of Chancery to perpetuate testimony. See Dan. Pr., pp. 1512—1515.

Under that Act it was held that there was jurisdiction to perpetuate testimony with a view to proceedings in a foreign Court: *Morris v. Morris*, 2 Phillips, 205. If an action is pending a separate action to perpetuate testimony does not lie: *Earl Spencer v. Peek*, 3 Eq. 415. As to action to perpetuate testimony as to the illegitimacy of the child of a lunatic's wife divorced on the ground of adultery, see *Re Stoer*, 9 P. D. 120.

36. In all actions to perpetuate testimony touching any honour, title, dignity, or office, or any other matter or thing in which the Crown may have any estate or interest, the Attorney-General may be made a defendant, and in all proceedings in which the depositions taken in any such action, in which the Attorney-General was so made a defendant, may be offered in evidence, such depositions shall be admissible notwithstanding any objection to such depositions upon the ground that the Crown was not a party to the action in which such depositions were taken. 518.  
Attorney-General a  
defendant.  
  
Depositions.

See note to last rule. And as to the power to bind the Crown by rules, see S. C. Jud. Act, 1875, s. 17, *ante*, p. 74, and 44 & 45 Vict. c. 59, s. 6.

37. Witnesses shall not be examined to perpetuate testimony unless an action has been commenced for the purpose. 519.  
Action  
necessary.

This rule is taken from Cons. O. IX., r. 6.

*Default of defence.*—In an action to perpetuate testimony the time for delivery of defence having expired, and the defendant not having applied for an extension of time, the plaintiff obtained, on motion, an order that the action might proceed, notwithstanding the default, and that he might be at liberty to examine the witnesses as if the pleadings were closed: *Marquis of Bute v. James*, 33 Ch. D. 157.

38. No action to perpetuate the testimony of witnesses shall be set down for trial. 520.  
No trial of  
action.

This rule is taken from Cons. O. IX., r. 7. See, as to practice in a suit to perpetuate testimony, Morgan, p. 430, and cases there cited.

## V.—EXAMINERS OF THE COURT.

39. The examination of any witness or person ordered to be taken under Rules 1 and 5 of this Order shall, in any cause or matter in the Chancery Division, unless the Court or a Judge shall otherwise direct, be taken before one of the Examiners of the Court, and may, in any cause or matter in the Queen's Bench and Probate Divorce and Admiralty Divisions, if the Court or a Judge shall so direct, be taken before one of such Examiners. 520 a.  
Examinations  
to be before  
examiners of  
the Court.

Upon the retirement in 1884 of the Examiners in Chancery, the rules which form Part V. of this Order were made for the appointment of examiners of the Court to take examinations of witnesses in rotation.



Ord. XXXVII.  
rr. 39—45.

*Special examiner.*—It is not now the practice of the Courts to appoint a special examiner to take a country examination, even, for instance, in a Welsh case, where it is alleged that the examination should be taken by a person conversant with the Welsh language. In such a case the examination will be referred in the usual way to one of the examiners of the Court, who is entitled, if necessary, to the assistance of an interpreter: *Marquis of Bute v. James*, 53 Ch. D. 157.

520 b.  
Appointment  
of examiners.

40. A sufficient number of Barristers-at-Law, of not less than three years' standing, shall be from time to time appointed by the Lord Chancellor to act as Examiners of the Court for a period not exceeding five years, and shall be at any time removable by the same authority.

520 c.  
Distribution of  
work among  
examiners.

41. The examinations to be taken before the Examiners of the Court shall be distributed among them in rotation by the first clerk to the Registrars of the Chancery Division, and in his absence by the second clerk, and in the absence of the first and second clerks by such of the other clerks to the Registrars as the Senior Registrar may determine.

520 d.  
Rotation of  
examiners.

42. The clerk in the last preceding rule mentioned shall be responsible for making the distribution according to regular and just rotation and in such manner as to keep secret from all persons the rota or succession of Examiners of the Court: and it shall be his duty to keep a record thereof with proper indexes and dates.

520 e.  
Authority for  
examiners to  
proceed.

43. The party prosecuting the order or his solicitor shall produce such order or a duplicate thereof to the clerk in Rule 41 mentioned, who shall, except in the case provided for in Rule 49, add at the foot thereof a memorandum specifying the name of the Examiner of the Court in rotation before whom the examination is appointed to be taken; and the order or duplicate shall be left by the party prosecuting the same, or his solicitor, with the Examiner so appointed, and shall be a sufficient authority for him to proceed with the examination.

520 f.  
Appointment  
of place and  
time by  
examiner.

44. Upon production of the order indorsed with his name, the Examiner of the Court shall give an appointment in writing, specifying the place and time (within *not more than seven days*) at which, subject to any application from the parties, the examination shall be taken; and the party prosecuting the order, or his solicitor, shall within *twenty-four hours*, or such shorter time (if any) as may be mentioned in the order, give notice of the appointment to all parties.

520 g.  
Place and  
time, con-  
venience of.

45. In determining the place and time at which an examination shall be taken, the Examiner shall have regard to the convenience of the witnesses or persons to be examined and all the circumstances of the case; and he shall proceed with such examination at the place and time appointed, and subject to such adjournment as he shall think necessary or just continue the same *de die in diem*.

The above rule was issued in October, 1884, and was substituted for the rule issued in February, 1884.

*Recalling witness.*—After a witness has been examined before an examiner of the Court, and his depositions have been signed, the examiner has power to adjourn the examination, and the witness may be recalled and is bound to attend upon notice given him that his attendance is required: *Re Metropolitan Brush Electric Light Co.*, 54 L. J., Ch. 253. Ord. XXXVII.  
rr. 45—51.

**46.** The Examiner may, with the consent in writing of all parties, take the examination of any witnesses or persons in addition to those named or provided for in the Order, and shall annex such consent to the original depositions. 520 h.  
Examination of witnesses in addition to those named in the order.

**47.** Upon the completion of an examination taken before an Examiner of the Court, he shall indorse the original depositions with a note, authenticated by his signature, certifying the number of hours or days (as the case may be) exclusively employed thereupon, and the fees received in respect thereof. 520 i.  
Indorsement of depositions by examiner.

The above rule was issued in October, 1884, and was substituted for the rule issued in February, 1884.

**48.** In case any Examiner of the Court, before whom according to the rotation any examination is to be taken, shall be engaged as counsel in the cause or matter to which such examination relates, or shall from illness or from any other cause be unable or decline to take such examination, the same shall be assigned by the clerk in Rule 41 mentioned to another Examiner of the Court according to the rotation aforesaid: Provided that it shall be the duty of any Examiner before whom any examination is pending to decline any other examination in any case where the acceptance thereof is likely to create delay or inconvenience in the taking of any examination before him. 520 j.  
When an examiner unable to hold examination, next examiner in rotation to be appointed.

The above rule was issued in October, 1884, and was substituted for the rule issued in February, 1884.

**49.** The Court or a Judge may, if they or he think fit, direct or transfer an examination to any one in particular of the Examiners of the Court. 520 k.  
Transfer of examinations.

**50.** The Court or a Judge may, on the application of an Examiner, order the payment to him by the party prosecuting the order of the fees and expenses payable to him on account of any examination, but without prejudice to any question on the taxation of costs as to the party by whom the costs of such examination should eventually be borne. 520 l.  
Payment of examiner's fee.

**51.** The Examiners of the Court shall be entitled to charge the fees mentioned in the Appendix hereto, in substitution for the fees heretofore allowed. 520 m.  
Fees.

O. XXXVII.  
r. 51.

EXAMINERS' FEES.

	£	s.	d.
1. Upon giving an appointment to take an examination	1	1	0
2. For the Examiner's clerk	0	2	6
3. For each hour or part of an hour occupied in an examination within three miles from the principal entrance of the Royal Courts of Justice	0	10	6
4. For each day of six hours or part of a day occupied in an examination beyond three miles from the principal entrance of the Royal Courts of Justice	5	5	0
For the Examiner's clerk, where an examination occupies more than three hours (in addition to fee No. 2) per day	0	2	6

The party prosecuting the order, or his solicitor, shall also pay all reasonable travelling and other expenses, including charges for the room (other than the Examiner's chambers) where the examination is taken.

NOTE.—The fees, Nos. 1 and 2, shall be paid by the party prosecuting the order, or his solicitor, at the time of obtaining the appointment, and may be retained by the Examiner and his clerk respectively, whether the examination is taken or not. The other fees shall be paid so soon as the examination has been concluded, together with any travelling or other expenses as above mentioned.

O. XXXVIII.  
rr. 1, 2.

ORDER XXXVIII.

I.—AFFIDAVITS AND DEPOSITIONS.

521.  
Affidavits on motion, petition, or summons.  
[O. XXXVII. r. 2.]

1. Upon any motion, petition, or summons evidence may be given by affidavit; but the Court or a Judge may, on the application of either party, order the attendance for cross-examination of the person making any such affidavit.

*Evidence on motion for judgment.*—See as to evidence by affidavit in such case, *Ellis v. Robbins*, 50 L. J., Ch. 512.

*Cross-examination.*—Compare with this rule, O. XXXVII., rr. 1, 20, *ante*, pp. 307, 314. As to the practice where notice to cross-examine is given, see *Ex parte Child*, 20 Ch. D. 126.

*Before whom conducted.*—Cross-examination on affidavits filed on a motion for attachment was directed to take place before the registrar of the County Court: *Lumb v. Osburn*, W. N. (1884), 218. Application for cross-examination before a District Registrar was refused: *Pye v. Pye*, W. N. (1885), 174.

*Discretion of Court.*—The Court has a discretion under this rule, and it is not obligatory on a Judge to order a deponent to an affidavit filed on a motion to attend for cross-examination: *La Trinidad v. Browne*, 36 W. R. 138.

522.  
Title of affidavit.

2. Every affidavit shall be intituled in the cause or matter in which it is sworn; but in every case in which there are more than one plaintiff or defendant, it shall be sufficient to state the full name of the first plaintiff or defendant respectively, and that there are other plaintiffs or defendants, as the case may be; and the costs occasioned by any unnecessary prolixity in any such title shall be disallowed by the taxing-officer.

This rule was introduced in 1883.



*Title of affidavit.*—See Dan. Pr., p. 624; Morgan, p. 433, and cases there cited.

O. XXXVIII.  
rr. 2—6.

*Contemplated action.*—An affidavit in a contemplated action should be intitled in such contemplated action, and in the matter of the Judicature Acts: *Young v. Brassey*, 1 Ch. D. 277. An interim injunction was granted where an affidavit had been sworn two days before the issue of the writ, upon an undertaking by plaintiff to have it re-sworn and filed: *Green v. Prior*, W. N. (1886), 50.

3. Affidavits shall be confined to such facts as the witness is able of his own knowledge to prove, except on interlocutory motions, on which statements as to his belief, with the grounds thereof, may be admitted. The costs of every affidavit which shall unnecessarily set forth matters of hearsay, or argumentative matter, or copies of or extracts from documents, shall be paid by the party filing the same.

523.  
Affidavit, how framed.  
[O. XXXVII.  
r. 3.]

*Interlocutory motions.*—See, as to the meaning of this term, *Re New Callao*, 26 Sol. J. 403. Upon a proceeding which, though interlocutory in form, finally decides the rights of the parties, evidence on information and belief is not admissible: *Gilbert v. Endean*, 9 Ch. D. 259.

*Grounds of belief.*—The affidavit should show the grounds of belief of the witness: *Bidder v. Bridges*, 26 Ch. D. 1.

*Prolixity.*—See O. LXV., r. 27 (20), *post*, p. 492. Costs of affidavits, setting out the contents of written documents, have been disallowed: *Hirst v. Procter*, W. N. (1882), 12. Although there is no rule specially giving power to the Court to take affidavits off the file for prolixity, yet the Court has inherent power to do so in order to prevent its records from being made the instruments of oppression: *Hill v. Hart-Davis*, 26 Ch. D. 470. See also *Walker v. Poole*, 21 Ch. D. 835.

4. Affidavits sworn in England shall be sworn before a Judge, District Registrar, Commissioner to administer oaths, or officer empowered under these Rules to administer oaths.

524.  
Affidavits, before whom sworn.

*Persons before whom affidavits may be sworn.*—See Dan. Pr., p. 621; Dan. Forms, p. 6, note (k); Morgan, p. 434; Chitt. Arch., p. 466; Chitt. Forms, pp. 726—729.

5. Every Commissioner to administer oaths shall express the time when and the place where he shall take any affidavit, or the acknowledgment of any deed, or recognizance; otherwise the same shall not be held authentic, nor be admitted to be filed or enrolled without the leave of the Court or a Judge; and every such Commissioner shall express the time when, and the place where, he shall do any other act incident to his office.

525.  
Time and place of swearing to be stated.

This rule is taken from C. O. IV.

Where a commissioner omitted to add his title as commissioner in the jurat the affidavit was held sufficient: *Ex parte Johnson*, 26 Ch. D. 338.

6. All examinations, affidavits, declarations, affirmations, and attestations of honour in causes or matters depending in the High Court, and also acknowledgments required for the purpose of enrolling any deed in the Central Office, may be sworn and taken in Scotland or Ireland or the Channel Islands, or in any colony, island, plantation, or place under the dominion of Her Majesty in foreign parts, before any Judge, Court, notary public, or person lawfully authorised to administer oaths in such country, colony, island,

526.  
Affidavits, &c. out of England.

**O. XXXVIII.**  
rr. 6—10.

plantation, or place respectively, or before any of Her Majesty's consuls or vice-consuls in any foreign parts out of Her Majesty's dominions; and the Judges and other officers of the High Court shall take judicial notice of the seal or signature, as the case may be, of any such Court, Judge, notary public, person, consul, or vice-consul, attached, appended or subscribed, to any such examinations, affidavits, affirmations, attestations of honour, declarations, acknowledgments, or to any other deed or document.

This rule is taken from 15 & 16 Vict. c. 86, s. 22.

*Affidavit sworn before notary, &c.*—The practice in Chancery of allowing an affidavit sworn in a place out of Her Majesty's dominions before a notary or other person authorised by the law of the country in which the affidavit is sworn to administer oaths, where no consul is accessible, is not affected by the above rule: *Cooke v. Wilby*, 25 Ch. D. 769; *Brittlebank v. Smith*, 32 W. R. 675; *Cooper v. Moon*, W. N. (1884), 178; but see *De Leon v. Hubbard*, W. N. (1883), 77. But in such cases the Court will not take judicial notice of the signature of the person before whom the affidavit is sworn, but the signature must be verified by affidavit, though the rule has been relaxed where the fund was very small: *Re Davis*, 8 Eq. 98. The Court will take judicial notice of the seal of a notary public affixed to a document, although the document is not a proceeding in a suit nor attested for the express purpose of being used in Court: *Brooke v. Brooke*, 17 Ch. D. 833. See further, Dan. Pr., pp. 621—623; Morgan, p. 435; Chitt. Arch., pp. 467—470.

527.  
Form of  
affidavits.  
[O. XXXVII.  
r. 3a.]

**7.** Every affidavit shall be drawn up in the first person, and shall be divided into paragraphs, and every paragraph shall be numbered consecutively, and as nearly as may be shall be confined to a distinct portion of the subject. Every affidavit shall be written or printed bookwise. No costs shall be allowed for any affidavit or part of an affidavit substantially departing from this rule.

Cf. C. O. XVIII., r. 1, and 15 & 16 Vict. c. 86, s. 37.

*Form of affidavit.*—The affidavit must commence by stating that the deponent "makes oath and says;" for even though the jurat express that the party was sworn, it will not be sufficient unless the affidavit also state that the deponent makes oath: *Allen v. Taylor*, 10 Eq. 52. Affidavits sworn in America were received, though expressed in the third person: *Re Husband*, 12 L. T. 303. See also Dan. Pr., p. 625; Morgan, p. 436.

528.  
Description  
and address  
of deponent.  
[O. XXXVII.  
r. 3b.]

**8.** Every affidavit shall state the description and true place of abode of the deponent.

*Deponent a party to the action.*—As to the description in such case, see Dan. Pr., p. 625; Dan. Forms, p. 4, n. (e).

*Deponent.*—In an affidavit of fitness of a proposed new trustee it is not sufficient to describe the deponent as a "gentleman:" *Re Orde*, 24 Ch. D. 271; *Re Horwood*, 55 L. T. 373.

529.  
Affidavits by  
two or more  
deponents.  
[O. XXXVII.  
r. 3c.]

**9.** In every affidavit made by two or more deponents the names of the several persons making the affidavit shall be inserted in the jurat, except that if the affidavit of all the deponents is taken at one time by the same officer it shall be sufficient to state that it was sworn by both (or all) of the "above-named" deponents.

*Place of signature.*—See Dan. Pr., p. 629; *Down v. Yearley*, W. N. (1874), 158.

530.  
Affidavits to  
be filed.

**10.** Every affidavit or other proof used in Admiralty actions shall be filed in the Admiralty Registry: every affidavit used in Probate



actions shall be filed in the Probate Registry: every affidavit used on the Crown side of the Queen's Bench Division shall be filed in the Crown Office Department: every affidavit used in a cause or matter proceeding in a District Registry shall be filed there: and every other affidavit used shall be filed in the Central Office. There shall be indorsed on every affidavit a note showing on whose behalf it is filed, and no affidavit shall be filed or used without such note, unless the Court or a Judge shall otherwise direct.

O. XXXVIII.  
rr. 10—13.

Place of filing.

[Cf. O.  
XXXVII.  
r. 3d.]

*Filing.*—As to printing and filing affidavits generally, see O. LXVI., rr. 1—7, *post*, p. 504. As to filing in Admiralty actions, see O. LXVI., rr. 8, 9, *post*, p. 506.

*Note.*—The words “indorsed on” in this rule were introduced by r. 13 of R. S. C. Dec., 1885: Cf. Ord. 5 Feb. 1861, r. 18.

11. The Court or a Judge may order to be struck out from any affidavit any matter which is scandalous, and may order the costs of any application to strike out such matter to be paid as between solicitor and client.

531.  
Scandalous  
matter in  
affidavit.

This rule was introduced in 1883. Compare the analogous provisions of O. XIX., r. 27, as to pleadings, and O. XXXI., r. 7 as to interrogatories.

*Scandalous matter.*—See Dan. Pr., p. 626; Chitt. Arch., p. 472; *Cracknell v. Janson*, 11 Ch. D. 1; *Goddard v. Parr*, 24 L. J., Ch. 783; *Kernick v. Kernick*, 12 W. R. 335; *Taylor v. Keily*, W. N. (1876), 139, where an affidavit of oppressive length was ordered off the file. See, too, *Hill v. Hart-Davis*, 26 Ch. D. 470; *Walker v. Poole*, 21 Ch. D. 835, cited under r. 4, *supra*.

12. No affidavit having in the jurat or body thereof any interlineation, alteration, or erasure, shall, without leave of the Court or a Judge, be read or made use of in any matter depending in Court unless the interlineation or alteration (other than by erasure) is authenticated by the initials of the officer taking the affidavit, or, if taken at the Central Office, either by his initials or by the stamp of that office, nor in the case of an erasure, unless the words or figures appearing at the time of taking the affidavit to be written on the erasure are re-written and signed or initialled in the margin of the affidavit by the officer taking it.

532.  
Alterations in  
affidavit.  
[O. XXXVII.  
r. 3e.]

No alteration can properly be made in any affidavit after it has been sworn, and any commissioner initialing such an alteration commits an irregularity, and renders himself liable to the revocation of his commission: Notice per L. C., W. N. (1882), Part II., 81.

13. Where an affidavit is sworn by any person who appears to the officer taking the affidavit to be illiterate or blind, the officer shall certify in the jurat that the affidavit was read in his presence to the deponent, that the deponent seemed perfectly to understand it, and that the deponent made his signature in the presence of the officer. No such affidavit shall be used in evidence in the absence of this certificate, unless the Court or a Judge is otherwise satisfied that the affidavit was read over to and appeared to be perfectly understood by the deponent.

533.  
Affidavits by  
illiterate  
persons.  
[O. XXXVII.  
r. 3f.]

Where the affidavit did not appear to have been read over to an illiterate deponent in the presence of the commissioner, it was ordered to be taken off the file: *Re Longstaffe*, 54 L. J., Ch. 516.



O. XXXVIII.  
rr. 14—19.

534.

Defects in title  
or jurat.

14. The Court or a Judge may receive any affidavit sworn for the purpose of being used in any cause or matter, notwithstanding any defect by misdescription of parties or otherwise in the title or jurat, or any other irregularity in the form thereof, and may direct a memorandum to be made on the document that it has been so received.

This rule was introduced in 1883. Compare with it the provisions of O. LXX. as to non-compliance. See *Harlock v. Ashberry*, 28 Sol. J. 26.

535.

Stamping of  
affidavits and  
use of copies.  
[O. XXXVII.  
r. 3g.]

15. In cases in which by the present practice an original affidavit is allowed to be used, it shall before it is used be stamped with a proper filing stamp, and shall at the time when it is used be delivered to and left with the proper officer in Court or in Chambers, who shall send it to be filed. An office copy of an affidavit may in all cases be used, the original affidavit having been previously filed, and the copy duly authenticated with the seal of the office.

536.

Affidavits not  
to be sworn  
before solicitor,  
&c. of  
party.

16. No affidavit shall be sufficient if sworn before the solicitor acting for the party on whose behalf the affidavit is to be used, or before any agent or correspondent of such solicitor, or before the party himself.

This rule and the next were introduced in 1883. Compare R. G. H. T., 1853, rr. 142, 143. See Dan. Pr., pp. 622, 623; Chitt. Arch., p. 467; *D. of Northumberland v. Todd*, 7 Ch. D. 777.

537.

Affidavits not  
to be sworn  
before clerk,  
&c. of party's  
solicitor.

17. Any affidavit which would be insufficient if sworn before the solicitor himself shall be insufficient if sworn before his clerk, or partner.

See note to last rule.

538.

Affidavits not  
to be used  
after time  
expired.

18. Where a special time is limited for filing affidavits, no affidavit filed after that time shall be used, unless by leave of the Court or a Judge.

This rule and the next are taken from R. G. H. T., 1853, rr. 145, 146.

539.

Orders not to  
be in force  
unless affi-  
davits made  
before motion.

19. Except by leave of the Court or a Judge no order made *ex parte* in Court founded on any affidavit shall be of any force unless the affidavit on which the application was made was actually made before the order was applied for, and produced or filed at the time of making the motion.

*Central Office notice.*—The following notice as to affidavits was issued from the Central Office in 1880 (see *Solicitors' Journal*, 24 July, 1880):—

*Notice as to Affidavits.*

*General directions as to searching for affidavits.*—All affidavits filed in the Central Office are deposited in the affidavit-room and entered in the index-books under the initial letter of the suit or matter in which the affidavit is used. There are two distinct sets of index-books:

- (1.) Affidavits filed in this office by the parties themselves, and
- (2.) Affidavits transmitted from Court or Chambers or the Master's Office which are usually received the day after they have been used:

But affidavits used on application in the Common Law Chambers and in Court

may have been filed in the first instance in this office and office copies of them used on the application, in which case the original affidavit would be in the index-book (No. 1). An affidavit not found in the index-book (No. 2) of affidavits transmitted should be searched for in the index-book (No. 1). Affidavits filed in the Queen's Bench, Common Pleas, and Exchequer Divisions, previous to the 6th of April, 1880, have been deposited in the affidavit office.

O. XXXVIII.  
rr. 19, 19a.

*In answer to interrogatories or of discovery of documents.*—Every affidavit in answer to interrogatories shall, when tendered for filing, be plainly marked on the outside by the party filing it with the capital letter A., and every affidavit of the discovery of documents shall, in like manner, be marked with the capital letter D., and notice shall be given to the clerk receiving such affidavit that it is an affidavit in answer to interrogatories or of documents (as the case may be); unless this be done, the affidavits may be overlooked in searches made for the purpose of giving certificates.

*Stamps.*—All adhesive stamps must be put on the first page of the affidavit in the margin.

*Exhibits.*—Exhibits should be annexed, when practicable, between the leaves of the affidavit for better security.

*Bills of sale affidavits.*—Affidavits used on application in Court or at chambers respecting bills of sale are filed in each case under the name of the party by whom the bill is given.

*Election petition affidavits.*—Affidavits used on applications under the Election Petition Act are filed under the name of the petitioner.

*Office copies left to be examined and marked.*—All office copies left to be marked must be stamped at the rate of 2d. per folio, and must have indorsed on the outside the name of the solicitor who will call for them. Where they are left after the original has been filed, the party leaving them must search the index for the index number of the original and the year in which it was filed, which must be indorsed on the back of the copy.

*Bespeaking copies to be made in the office.*—Where office copies are required to be made in the office the party bespeaking such copy must fill up on the printed (blue) bespeak form necessary particulars, including the number of the affidavit in the index-book, which he must ascertain for himself. The stamps in payment of such copies must be left pinned on the bespeak form.

*Producing affidavits from the affidavit office before a Judge or Master, and in Court.*—Where it is required to produce affidavits already on the file, before a Judge or Master in Chambers, the party must fill up the (white) bespeak form, and leave it with the officer (where practicable) the day before such affidavit is required. Pursuant to rule 51 of the Rules of April, 1880, no original affidavit which is on the file can be produced in any Court without an order from a Judge or Master, but office copies may be used.

*Referring to affidavits on the file for the purpose of drawing the order.*—Where an affidavit has to be referred to in an order, it will be sufficient if the parties produce at the summons and order desk a certificate of filing from the affidavit office, where forms of certificate are supplied. These must be filled up by the party, and handed to the filing-clerk to be sealed.

*Inspecting original affidavits.*—When it is desired to inspect any original affidavit, a fee of 1s. (stamped on a "search precept") must be paid, and on no account is the affidavit to be removed from the office, or to be marked or written upon; when done with it should be returned to the officer.

*Altering office copies.*—No alteration, interlineation, or erasure shall on any account be made upon any office copy which has been issued from this office.

19A. The consent of a new trustee to act shall be sufficiently evidenced by a written consent signed by him and verified by the signature of his solicitor. Form I in the Appendix hereto shall be used with such variations as circumstances may require, and may be cited as Form 29 in Appendix L.

539a.  
Consent of  
new trustee  
to act.  
Evidence—  
Form.

**O. XXXVIII.  
rr. 19a—26.**

*Lunacy proceedings.*—Where a petition is intituled both in Lunacy and in the Chancery Division, the consent of a new trustee is sufficiently verified by his solicitor's certificate under this rule: *Re Hume*, 35 Ch. D. 457; *Secus*, if intituled in Lunacy only: *Re Wilson*, 31 Ch. D. 522.

**II.—AFFIDAVITS AND EVIDENCE IN CHAMBERS.**

540.  
Notice of  
intention to  
use affidavit  
in Chancery  
Chambers.

**20.** The party intending to use any affidavit in support of any application made by him in Chambers in the Chancery Division shall give notice to the other parties concerned of his intention in that behalf.

This rule is taken from C. O. XXXV., r. 27.

541.  
Use of affi-  
davits pre-  
viously used.

**21.** All affidavits which have been previously made and read in Court upon any proceeding in a cause or matter, may be used before the Judge in Chambers.

This rule is taken from C. O. XXXV., r. 28.

542.  
Alterations in  
accounts.

**22.** Every alteration in an account verified by affidavit to be left at Chambers shall be marked with the initials of the Commissioner or officer before whom the affidavit is sworn, and such alterations shall not be made by erasure.

This and the two following rules are taken from Ch. Reg., Aug. 8, 1857, rr. 10—12.

543.  
Documents to  
be referred to  
as exhibits.

**23.** Accounts, extracts from parish registers, particulars of creditors' debts, and other documents referred to by affidavit, shall not be annexed to the affidavit, or referred to in the affidavit as annexed, but shall be referred to as exhibits.

See note to last rule.

544.  
Title of certi-  
ficate on  
exhibits.

**24.** Every certificate on an exhibit referred to in an affidavit signed by the Commissioner or officer before whom the affidavit is sworn, shall be marked with the short title of the cause or matter.

See note to rule 22.

**III.—TRIAL ON AFFIDAVIT.**

545.  
Trial on  
affidavit.  
Plaintiff's  
affidavits.  
[O. XXXVIII.  
r. 1.]

**25.** Within *fourteen days* after a consent for taking evidence by affidavit as between the parties has been given, or within such time as the parties may agree upon, or the Court or a Judge may allow, the plaintiff shall file his affidavits and deliver to the defendant or his solicitor a list thereof.

Part III. of this Order is founded on the former practice in Chancery under 15 & 16 Vict. c. 86, s. 15, and C. O. XXXIII., rr. 4—8.

*Affidavit evidence by consent.*—See O. XXXVII., r. 1, *ante*, p. 307.

546.  
Defendant's  
affidavits.  
[O. XXXVIII.  
r. 2.]

**26.** The defendant, within *fourteen days* after delivery of such list, or within such time as the parties may agree upon, or the Court or a Judge may allow, shall file his affidavits and deliver to the plaintiff or his solicitor a list thereof.



27. Within *seven days* after the expiration of the last-mentioned fourteen days, or such other time as aforesaid, the plaintiff shall file his affidavits in reply, which affidavits shall be confined to matters strictly in reply, and shall deliver to the defendant or his solicitor a list thereof.

*Matters strictly in reply.*—In *Peacock v. Harper*, 7 Ch. D. 648, it was held by Hall, V.-C., notwithstanding the words of this rule, that confirmatory affidavits may be used in reply: see, too, *Gilbert v. Comedy Opera Co.*, 16 Ch. D. 594. An affidavit which transgresses this rule by introducing irrelevant matter cannot be struck off the file, but will be disregarded: *Ibid*.

28. When the evidence is taken by affidavit, any party desiring to cross-examine a deponent who has made an affidavit filed on behalf of the opposite party may serve upon the party by whom such affidavit has been filed a notice in writing, requiring the production of the deponent for cross-examination at the trial, such notice to be served at any time before the expiration of *fourteen days* next after the end of the time allowed for filing affidavits in reply, or within such time as in any case the Court or a Judge may specially appoint; and unless such deponent is produced accordingly, his affidavit shall not be used as evidence unless by the special leave of the Court or a Judge. The party producing such deponent for cross-examination shall not be entitled to demand the expenses thereof in the first instance from the party requiring such production.

This rule is founded on the Gen. Ord., 5 Feb., 1861, r. 19.

*Cross-examination.*—Where an affidavit has once been filed the opposite party has the right to cross-examine the deponent, whether himself a party or a mere witness, although the affidavit is withdrawn without being used: *Re Quartz Hill Co.*, 21 Ch. D. 642; *Ex parte Child*, 20 Ch. D. 126.

*Failure of witness to attend for cross-examination.*—The fact that a witness has disobeyed an order to attend and be cross-examined is not ground for taking his affidavit off the file; because by this rule it can only be used by special order: *Meyrick v. James*, 46 L. J., Ch. 579.

*To what cases the Rule is applicable.*—In the case of *Re Knight*, 25 Ch. D. 297, it was decided that the corresponding rule of R. S. C., 1875, O. XXXVIII., r. 4, applied only to evidence at the trial, and not to evidence after the hearing: but see *Backhouse v. Alecock*, and *Re Baker*, cited *infra*. In *Concha v. Concha*, 11 App. Cas. 541, at pp. 558, 559, the point seems to be considered as still open to question.

*Expenses of witness.*—By the combined effect of O. XXXVII., r. 21, and this rule, the provision as to expenses applies to a cross-examination in proceedings before a Chief Clerk, or before an examiner: *Backhouse v. Alecock*, 28 Ch. D. 669; *Re Baker*, 29 Ch. D. 711. *Re Knight*, 25 Ch. D. 297, cannot be considered as any longer governing the practice. The rule applies to cross-examination of a witness on an affidavit before trial, under O. XXXVII., r. 22: *Mansel v. Clunricarde*, 54 L. J., Ch. 982.

*Notice.*—A notice merely requiring the production of a witness for cross-examination without specifying time or place, is not sufficient: *Concha v. Concha*, 11 App. Cas. 541.

*Form of notice.*—See App. B, No. 20, *post*, p. 549.

*Witness out of the jurisdiction.*—It seems to be doubtful if the rule applies to the case of a witness out of the jurisdiction: *Concha v. Concha*, at p. 559.

29. The party to whom such notice as is mentioned in the last-preceding Rule is given shall be entitled to compel the attendance

O. XXXVIII.  
rr. 27—29.

547.  
Affidavits in  
reply.

[O. XXXVIII.  
r. 3.]

548.  
Cross-  
examination.  
[O. XXXVIII.  
r. 4.]  
Notice to  
cross-examine.

549.  
Compelling  
attendance.

O. XXXVIII. of the deponent for cross-examination in the same way as he might  
rr. 29, 30. compel the attendance of a witness to be examined.

[O. XXXVIII. See O. XXXVII., r. 20, *ante*, p. 314.  
r. 5.]

550.  
Printing of  
evidence and  
notice of trial.  
[Cf. O.  
XXXVIII.  
r. 6.]  
Exceptions.

30. When the evidence under this Order is taken by affidavit, such evidence shall be printed, and the notice of trial shall be given at the same time after the close of the evidence as in other cases is by these Rules provided after the close of the pleadings: provided that other affidavits may be printed if all the parties interested consent thereto, or the Court or a Judge so order: provided also, that this Rule shall not apply in the Probate Divorce and Admiralty Division to default actions *in rem*, or references in actions, or actions for limitation of liability, unless the Court or a Judge shall otherwise order.

The proviso to this rule was introduced in 1883. As to default actions *in rem*, see O. XIII., rr. 12, 13, *ante*, pp. 165, 166; as to references in Admiralty, see O. LVI., *post*, p. 427.

*Printing.*—Affidavit evidence taken under this Order is to be printed by the parties: O. LXVI., *post*, p. 504; where see as to printing, delivery of copies, costs, &c. By rule 6 of that Order, affidavits need not be printed, if they have been previously used in manuscript.

*Notice of trial.*—As to the time for giving notice of trial, see O. XXXVI., r. 11, *ante*, p. 294.

*Affidavits after notice of trial.*—The provision of this rule as to time does not apply to exclude the use of affidavits made after notice of trial under a Judge's order: *Waring v. Lacey*, 24 W. R. 318.

Ord. XXXIX.  
r. 1.

## ORDER XXXIX.

### MOTION FOR NEW TRIAL.

551.  
Motion for  
new trial,  
where made.  
[Cf. O.  
XXXIX. r. 1.]

1. Every motion for a new trial, or to set aside a verdict, finding, or judgment, shall be made (1) in every cause or matter by the principal Act assigned to the Probate Divorce and Admiralty Division where there has been a trial thereof or of any issue therein with a jury, to a Divisional Court of that Division, one of the Judges of which shall (when practicable) sit on the hearing of such motion; (2) in every other cause or matter where there has been a trial thereof or of any issue therein with a jury, to a Divisional Court of the Queen's Bench Division; and (3) where there has been a trial without a jury, by appeal to the Court of Appeal.

*Effect of Order.*—This Order and the next considerably modify the procedure to obtain a new trial in jury cases.

*Rules nisi abolished.*—1. Rules *nisi* for a new trial are abolished, and the application will be by an ordinary *eight days'* notice of motion: see rule 3.

*Application for new trial and appeal.*—2. Where there is an application for a new trial, and also an appeal against the judgment of the Judge, both applications will be heard by the Divisional Court, instead of, as formerly, one going to the Divisional Court, the other to the Court of Appeal: see O. XL., r. 5, *post*, p. 334.



*Issues from Ch. Div.*—3. An application for a new trial of issues sent from the Chancery Division will be made to a Divisional Court of the Queen's Bench Division, and not to the Chancery Judge before whom the action is pending.

Ord. XXXIX.  
r. 1.

*Probate Division.*—4. In the Probate, &c. Division, the application will be to a Divisional Court of that Division instead of to the Judge who tried the case.

*Non-jury cases.*—5. In non-jury cases there are no longer motions for new trial to the Court of Appeal, but a new trial is applied for by appeal in the ordinary way.

*Judge alone.*—Under the repealed rules, when a Judge, sitting alone without a jury, tried the issues of fact in an action separately from the issues of law, and came to a separate decision upon them, any party dissatisfied with his decision had to apply to the Court of Appeal by motion for a new trial within *twenty-one days*: *Krehl v. Burrell*, 10 Ch. D. 420, as explained by *Potter v. Cotton*, 5 Ex. D. 137, and *Jones v. Hough*, 5 Ex. D. 115, at p. 124. Under the present rules, a party dissatisfied with such findings will appeal in the ordinary way, but the application, apparently, must as heretofore be made within *twenty-one days*, as being an appeal from an interlocutory order. On an appeal from the decision of a Judge alone, the Court of Appeal can order a new trial without any application for a new trial having been made: see O. LVIII., r. 5, *post*, p. 440, and see per Cotton, L. J., in *Jones v. Hough*, 5 Ex. D. 115. Conversely, on an application for a new trial, the Court of Appeal may, if it have all the necessary materials before it, direct judgment for the party moving instead of a new trial: *Waddell v. Blockey*, 10 Ch. D. 416; Cf. O. XL., r. 10, *post*, p. 336.

*Jury cases.*—As regards jury cases, it was held under the repealed rules that where the jury had been dismissed, and the Judge eventually decided the case, the remedy of the party dissatisfied was by way of appeal to the Court of Appeal, and not by application for a new trial: *Metropolitan Bank v. Heiron*, W. N. (1880), 132. Where the Judge directed a judgment of non-suit after evidence had been taken, the proper course was to apply for a new trial to the Divisional Court: *Etty v. Wilson*, 3 Ex. D. 359; but if the plaintiff was non-suited on his counsel's opening, or on the admitted facts, the case was not quite clear: see per Thesiger, L. J., *Ibid.*, at p. 360; see, too, *Hall v. Jope*, 49 L. J., C. P. 721; *Davies v. Felix*, 4 Ex. D. 32, at p. 35. Where the Judge refused to non-suit, and the jury found for the plaintiff, and the Judge thereupon directed judgment to be entered for the plaintiff, the proper course for the defendant was to move for a new trial before a Divisional Court: *Davies v. Felix*, 4 Ex. D. 32. So, too, where the facts were not really in dispute, and the Judge directed the jury to find for the plaintiff, and thereupon directed judgment to be entered for the plaintiff: *Yettis v. Foster*, 3 C. P. D. 437. The withdrawal of a juror does not put an end to the cause. If there is a breach of the terms on which the juror was withdrawn the Court can re-try the action: *Thomas v. Exeter, &c. Co.*, 18 Q. B. D. 822.

It is to be noted that the rule relating to judgment of non-suit (O. XLI., r. 6) has been annulled, and a judgment now in all cases will be simply for the plaintiff or the defendant. The provisions of O. XL., rr. 3—5, do not appear to effect any alteration in the practice which was settled by the above decisions.

*Powers of Court.*—As to the powers of the Court upon a motion for a new trial, see O. XL., r. 10, *post*, p. 336.

*Trial in County Court.*—An action sent for trial to a County Court, under 19 & 20 Vict. c. 108, s. 26, and tried before the Judge, is not within the above rule: *London v. Roffey*, 3 Q. B. D. 6; *Davis v. Godbhere*, 4 Ex. D. 215; *Swansea Co-operative Building Society v. Davies*, 12 Q. B. D. 21.

*Interpleader.*—Where an interpleader issue has been tried by a Judge and jury, a motion for a new trial, on the ground of misdirection, must be made, not to the Court of Appeal, but to a Divisional Court: *Robinson v. Tucker*, 14 Q. B. D. 371.

*Divorce cases.*—Appeals under the Divorce Acts, which used to go to the full Court, are now regulated by S. C. Jud. Act, 1881, s. 9, which provides that they shall go to the Court of Appeal. New trials in divorce cases are under this Order to be heard by a Divisional Court.

*Misdirection.*—By the express terms of S. C. Jud. Act, 1875, s. 22, *ante*, p. 77,



**Ord. XXXIX.**  
**rr. 1—4.**

any party, on a trial by jury, is entitled to have the Judge fully direct the jury on all points of law; and a misdirection may be the ground of a motion in the Court of Appeal founded on an exception annexed to the record. Where there was no record, the Court ordered notice of motion to be given: *Re Harris*, 2 P. D. 161.

*Excessive damages.*—In a case where the plaintiff is entitled to substantial damages, and a verdict for the plaintiff cannot be impeached, except on the ground that the damages are excessive, the Court has power to refuse a new trial, on the plaintiff alone, and without the defendant, consenting to the damages being reduced to such an amount as the Court would consider not excessive had they been given by the jury: *Belt v. Lawes*, 12 Q. B. D. 356.

*Co-defendant.*—A defendant who has moved should always serve notice on the other defendant: *Purnell v. Great Western Ry. Co.*, 1 Q. B. D. 636.

*Divisional Courts.*—As to the constitution of Divisional Courts, see App. Jur. Act, 1876, s. 16, *ante*, p. 88, and O. LIX., *post*, p. 449.

*Appeals.*—See S. C. Jud. Act, 1873, s. 19, and notes thereto, *ante*, p. 10; and O. LVIII., *post*, p. 434.

552.  
Judge at trial  
not to sit.

**2.** No Judge shall sit on the hearing of any motion for a new trial in any cause or matter tried with a jury before himself.

This rule was introduced in 1883. Compare the provisions of S. C. Jud. Act, 1875, s. 4, as to Judges not sitting on appeals from their own judgments.

553.  
Rules nisi  
abolished.  
Form of notice  
of motion.

**3.** Every application for a new trial shall be by notice of motion, and no rule *nisi*, or to show cause, or formal proceeding other than such notice of motion, shall be made or taken. The notice shall state the grounds of the application, and whether all or part only of the verdict or findings is complained of.

*Effect of Rule—Stay of Execution.*—Under the repealed rules (O. XXXIX., r. 5) the granting of a rule *nisi* operated as a stay of execution. No such provision exists in the present rules, and it will in the future be necessary, if a stay of execution is wanted, to apply for it, either to the Judge who tried the case or by summons at Chambers. See *Goddard v. Thompson*, 47 L. J., Q. B. 382.

*Appeal from County Court.*—It was held under this rule that an appeal from the decisions of a County Court Judge must be by motion *ex parte*, under the County Courts Act, 1875, s. 6, and not by giving notice of motion under the above rule: *Matthews v. Ovey*, 13 Q. B. D. 403; and that the practice was the same with regard to actions remitted to the County Court: *Pritchard v. Pritchard*, 14 Q. B. D. 55. But see now O. LIX., rr. 9 *et seq.*, *post*, p. 452, as to appeals from Inferior Courts. These rules abolish rules *nisi* in the cases to which they relate.

*Misdirection.*—Notice of motion for a new trial on the ground of misdirection should state how and on what matters the Judge misdirected the jury: *Pfeiffer v. Midland Ry. Co.*, 18 Q. B. D. 243; *Murfit v. Smith*, 12 P. D. 116.

*Divorce proceedings.*—The rule requiring particulars of misdirection to be given applies to divorce proceedings: *Taplin v. Taplin*, 13 P. D. 100.

554.  
Time for ser-  
vice of notice  
of motion.  
[Cf. O.  
XXXIX.  
r. 1a.]

**4.** The notice of motion shall be an *eight days'* notice, and shall be served within the times following, viz., if the trial has taken place in London or Middlesex, within *eight days* after the trial; if the trial has taken place elsewhere than in London or Middlesex, within *seven days* after the last day of sitting on the circuits for England and Wales during which the trial shall have taken place. The time of the vacations shall not be reckoned in the computation of the time for serving the notice of motion.

*Effect of Rule.*—This rule was introduced in 1883. In London and Middlesex cases it substitutes *eight days* as the limit of time for giving the notice of motion

for the old four days in which formerly a party had to move for a rule *nisi*. In circuit cases the limit of time for giving notice of motion is the same as it formerly was for moving.

Ord. XXXIX.  
rr. 4—6.

*Time.*—Time for moving does not run in the vacations. In this respect the method of computing time for applying for a new trial has been changed, and has been assimilated to the computation of time for delivering pleadings. Time for giving the notice of motion runs from the discharge of the jury. See *Shaw v. Hope*, 25 W. R. 729, decided under the old practice. The time can be extended: O. LXIV., r. 7, *post*, p. 469. See *Smith v. Snacksmen's Insurance Co.*, 32 W. R. 184. The computation of time for moving for a new trial does not apply to motions to set aside the report of a referee: *Dyke v. Cannell*, 11 Q. B. D. 180. As to moving for a new trial conditionally on the result of a decision pending in the Court of Appeal, in a similar cause, see *Peckett v. Short*, 32 W. R. 123. The rule does not apply to an appeal from the judgment at the trial of an action by a Judge without a jury, on the ground that the Judge's findings of facts were erroneous; such a case is governed by O. LVIII., r. 15: *Lea v. Facey*, W. N. (1887), 147.

5. The notice may be amended at any time by leave of the Court or a Judge on such terms as the Court or Judge may think just.

555.  
Amendment  
of notice.

See as to general powers of amendment, O. XXVIII., r. 12, *ante*, p. 246.

Presumably an application to amend, if made before the hearing of the motion, will have to be by summons at Chambers.

6. A new trial shall not be granted on the ground of misdirection or of the improper admission or rejection of evidence, or because the verdict of the jury was not taken upon a question which the Judge at the trial was not asked to leave to them, unless in the opinion of the Court to which the application is made some substantial wrong or miscarriage has been thereby occasioned in the trial; and if it appear to such Court that such wrong or miscarriage affects part only of the matter in controversy, or some or one only of the parties, the Court may give final judgment as to part thereof, or some or one only of the parties, and direct a new trial as to the other part only or as to the other party or parties.

556.  
Restrictions  
upon new  
trials.  
[Cf. O.  
XXXIX. r. 3.]

*Effect of Rule.*—This rule differs from the corresponding rule, O. XXXIX., r. 3, in two important particulars, viz.:—

1. No new trial is to be granted because a verdict was not taken on a point which the Judge was not asked to leave to the jury.
2. A new trial may be granted as regards one or more of the parties without disturbing the result of the trial as affecting other parties.

*New trial in Chancery.*—See, as to the principles on which the Court of Chancery acted in granting new trials of issues, Dan. Pr., pp. 757 *et seq.*

*Misdirection.*—See S. C. Jud. Act, 1875, s. 22, *ante*, p. 77, and note to r. 1. It is not misdirection for the Judge to tell the jury his own opinion on the issue before them: *Smith v. Dart*, 14 Q. B. D. 105, at p. 108.

*Verdict against weight of evidence.*—A new trial ought not to be granted on the ground that the verdict was against the weight of evidence, unless the verdict was one which a jury, viewing the whole of the evidence reasonably, could not find: *Metropolitan Ry. Co. v. Wright*, 11 App. Cas. 152, observing upon *Solomon v. Bitton*, 8 Q. B. D. 176. See also *Webster v. Friedeberg*, 17 Q. B. D. 736.

*County Court.*—It was held in *Shapcott v. Chappell*, 12 Q. B. D. 58, that the above rule applied to a motion in the High Court for a new trial in a County Court action, but this decision was questioned by the C. A. in *Matthews v. Ovey*, a case under rule 3 of this Order, *ubi supra*. But see O. LIX., r. 7, one of the Rules of October, 1884, *post*, p. 452, and O. LIX., r. 10, one of the Rules of December, 1885, *post*, p. 452, which provide that appeals from Inferior Courts shall be by way of motion, and that no rule *nisi* shall be necessary.

Ord. XXXIX.  
rr. 7, 8.

557.

New trial as  
to part.

[O. XXXIX.  
r. 4.]

558.

Stamp objec-  
tion.

7. A new trial may be ordered on any question, whatever be the grounds for the new trial, without interfering with the finding or decision upon any other question.

This rule reproduces the repealed O. XXXIX., r. 4.

8. A new trial shall not be granted by reason of the ruling of any Judge that the stamp upon any document is sufficient, or that the document does not require a stamp.

This rule was introduced in 1883, and is taken from s. 31 of C. L. P. Act, 1854. Subject to the limitations imposed by rule 6, if a document be tendered in evidence, and rejected by the Judge as insufficiently stamped, the rejection would, as before the Judicature Acts, be a ground for a new trial. As to the practice before the Judicature Acts, see *Sharples v. Rickard*, 2 H. & N. 57.

Order XL.  
r. 1.

## ORDER XL.

### MOTION FOR JUDGMENT.

559.

Judgment by  
motion.

[O. XL. r. 1.]

1. Except where by the Acts or by these Rules it is provided that judgment may be obtained in any other manner, the judgment of the Court shall be obtained by motion for judgment.

#### MOTION FOR JUDGMENT: TO WHAT CASES APPLICABLE.

##### A. Where facts are not put in issue:—

- (1) *On default in appearance.*—In cases not within the provisions as to judgment of O. XIII., rr. 3—11: see O. XIII., r. 12, *ante*, p. 165.
- (2) *On default in pleading.*—In cases not within the provisions as to judgment of O. XXVII., rr. 2—10, whether as between plaintiff and defendant, or as between parties other than plaintiff and defendant: see O. XXVII., rr. 11, 12, 14, *ante*, pp. 239—241.
- (3) Where there are *admissions*, actual or implied, either on the pleadings or otherwise: see O. XXXII., r. 6, *ante*, p. 270.

##### B. Where facts are put in issue:—

*Where issues directed and tried.*—In such case, when *all* the issues directed have been tried, the plaintiff, or, on his default, the defendant, may set down a motion for judgment; where *some* only of the issues have been tried, any party who considers that the trial of the other issues is unnecessary, or should be postponed, may apply for leave to set down a motion for judgment: see rr. 7, 8, *infra*.

##### C. After trial:—

- (1) Where the Judge at the trial abstains from directing any judgment to be entered: see r. 2, *infra*.
- (2) Where the judgment is sought to be set aside, on the ground that the finding of the jury was improperly entered, or on the ground that judgment has been wrongly directed: see rr. 3, 4, *infra*.
- (3) Where it is sought to set aside a judgment directed to be entered by a referee: see r. 6, *infra*.

See Dan. Forms, p. 317.

*Practice on motions.*—See O. LII., *post*, p. 386.

*By whom heard.*—By App. Jur. Act, 1876, s. 17, *ante*, p. 89, and these rules, motion for judgment, like other steps not expressly authorized by these rules to



be taken before a Divisional Court (see O. LIX., *post*, p. 449), must be before a single Judge, and if made after trial, before the Judge who tried the action; except in the jury cases, contemplated by r. 10 of this Order, and in cases tried before Referees, in which cases the motion for judgment will be to a Divisional Court.

Order XL.  
rr. 1, 2.

*Actions in the Chancery Division.*—"The Master of the Rolls and the Vice-Chancellors have given directions that motions for judgment in actions shall not be brought on as ordinary motions, but shall be set down in the cause book. They can be marked short, on production of the usual certificate of counsel, and will then be placed in the paper on the first short cause day after the day for which notice is given. If not marked short, they will come into the general paper in their regular turn. It will be advisable that the notices of motion for judgment should, if it is intended to mark them short, contain a statement to that effect, and also a statement that no further notice will be given of their having been so marked. Such statement will dispense with the necessity for giving defendants further notice that motions for judgment have been marked short. Where a defendant makes his defence, and the plaintiff moves under O. XL., r. 11 [now O. XXXII., r. 6], for such order as he is entitled to on the admissions of the defendant, the action need not be set down; but if, on the motion being made, it appears that there must be a discussion or argument, it may be ordered to go into the general paper, subject to any order for its being advanced. The attention of solicitors is also called to the provisions in the Judicature Rules as to notices of trial, as notice of trial can only be given after pleadings closed; the proper course, where there are no pleadings, is to set the action down on motion for judgment under O. XL., r. 1": Reg. Notice, Feb. 1877; W. N. (1877), Pt. II., p. 58; and see 1 Seton, p. 39.

*Setting down.*—In order to set the motion down a copy of the notice of motion must, if the action is proceeding in London, be produced to the officer at the Registrar's Office at the Royal Courts of Justice, and two printed copies of the pleadings must, at the same time, be delivered to him, one for the use of the Judge at the trial, and the other for the use of the Registrar. The copy of the notice of motion produced to the officer is retained by him, and should be indorsed with a memorandum signed by the solicitor of the party setting down the motion that a guardian *ad litem* has been appointed for any infant defendant, or that there is not any infant defendant. If the action is proceeding in a District Registry, the motion is set down with the District Registrar, who should forward to the senior Chancery Registrar a formal notification that the action has been so set down, with a copy of the notice of motion, and the two copies of the pleadings should be remitted by the solicitor in the country to his London agent for delivery to the proper officer: Dan. Pr., pp. 666, 667; 1 Seton, pp. 39, 40.

*Short cause.*—Where there are no pleadings, and the cause is marked short, Malins, V.-C., laid down that the papers to be left for the Judge were the writ and the notice of motion: *Oliver v. Wright*, W. N. (1877), 80. An action for rectification of a settlement was not allowed to be brought on as a short cause: *Clennell v. Clennell*, W. N. (1884), 14.

*Length of notice.*—There must be *two clear days'* notice: O. LII., r. 5, *post*, p. 388. For form of notice of motion, see Dan. Forms, p. 318; Chitt. Forms, p. 371.

*Action remitted to County Court.*—Where an action is sent for trial to a County Court, under 19 & 20 Vict. c. 108, s. 26, judgment may be entered in accordance with the Registrar's certificate of the result, as provided by the section; no motion for judgment is necessary: *Scutt v. Freeman*, 2 Q. B. D. 177. As to the costs in such actions, see now O. LXV., r. 4, *post*, p. 478.

*Special case.*—As to moving for judgment on a special case, see *Harrison v. Cornwall Minerals Ry.*, 49 L. J., Ch. 834.

*Form of judgment.*—See App. F, No. 10, *post*, p. 587.

2. Where at the trial the Judge or Referee abstains from directing any judgment to be entered, the plaintiff may set down a motion for judgment. If he does not set down such a motion and give notice thereof to the other parties within *ten days* after the trial, any

560.

Motion where  
no judgment  
at trial.

[O. XL. r. 3.]

**Order XL.  
rr. 2—5.**

defendant may set down a motion for judgment, and give notice thereof to the other parties.

See note to last rule.

A Judge does not "abstain" within this rule unless he is asked to give judgment: *Davenport v. Ward*, 47 L. T. 348.

561.

Motion for judgment, where finding wrongly entered.

[Cf. O. XL. r. 4a.]

**3.** Where, at or after a trial with a jury, the Judge has directed that any judgment be entered, any party may apply to set aside such judgment and enter any other judgment, on the ground that the judgment directed to be entered is wrong by reason that the finding of the jury upon the questions submitted to them has not been properly entered.

*Effect of Rule.*—This and the two succeeding rules reproduce, with some modifications, the provisions of the repealed O. XL., r. 4a.

According to the practice of the Common Law Courts, unless leave were reserved by the Judge at the trial, any party dissatisfied with the trial could, under any circumstances, only move for a new trial, never for a verdict or judgment. The repealed rules altered this practice in two instances, and the present rules substantially re-enact the provisions of the repealed rules in this respect. It may often happen that an issue agreed upon or raised by the pleadings may be general in its terms; for example, partnership or no partnership at a given time. When the case is fully gone into, it may be found that the question the jury have really to determine is some smaller one; say, for instance, the date of execution of a particular deed. Having taken the opinion of the jury upon this last question, it may become the duty of the Judge to construe the deed, and direct the finding upon the issue to be entered accordingly. And upon this finding the result of the cause may depend. Again, when all the issues have been found, the Judge may, under O. XXXVI., r. 39, *ante*, p. 301, direct judgment to be entered. In either of these cases, if the Judge is mistaken, his mistake may, under the present and two next succeeding rules, be corrected by the Court without leave reserved, and without a new trial. See note to O. XXXIX., r. 1, *ante*, p. 328.

*Cases.*—In applications under this and the next succeeding rule, it is assumed that the findings of the jury are correct, and applications proceed upon the ground that the findings or judgment have been wrongly entered: see *Davies v. Felix*, 4 Ex. D. 32, at p. 35, per Brett, L. J.; *Hamilton v. Johnson*, 5 Q. B. D. 263, at p. 266, per Bramwell, L. J., decided under the repealed rules. It was held, under the repealed rules, that they did not apply to the case where the Judge had entered a judgment of non-suit under the repealed O. XLI., r. 6: *Elty v. Wilson*, 3 Ex. D. 359; or to a case where the Judge refused to non-suit, and the jury thereupon found for the plaintiff, and judgment was entered accordingly: *Davies v. Felix*, 4 Ex. D. 32.

562.

Motion for judgment where judgment wrongly entered on findings.

[Cf. O. XL. r. 4a.]

**4.** Where, at or after a trial by a Judge, either with or without a jury, the Judge has directed that any judgment be entered, any party may apply to set aside such judgment and to enter any other judgment, upon the ground that, upon the finding as entered, the judgment so directed is wrong.

See note to last rule.

563.

To what Court motion should be made.

[Cf. O. XL. r. 4a.]

**5.** An application under Rules 3 and 4 of this Order shall be to the Court of Appeal, unless, where there has been a trial with a jury, there is also a motion for a new trial, in which case it shall be to the Divisional Court by which such motion shall be heard.

*Effect of Rule.*—This rule is to some extent new since 1883, and removes a difficulty which prevailed under the repealed rules in cases where it was desired to set aside the findings of the jury, and also appeal from the judgment entered



upon the findings. In such cases under the repealed rules separate applications had to be made to the Court of Appeal and the Divisional Court. Under the present rule both applications will be made to the Divisional Court.

As to applications to the Court of Appeal, see O. LVIII., rr. 1 and 2, *post*, pp. 434, 436. As to motions before a Divisional Court for new trial, see O. XXXIX., r. 1, and notes thereto, *ante*, p. 328.

Order XL.  
rr. 5—9.

6. Where at a trial by a Referee he has directed that any judgment be entered, any party may move to set aside such judgment, and to enter any other judgment, on the ground that upon the finding as entered the judgment so directed is wrong: Provided that in the Queen's Bench Division such motion shall be made to a Divisional Court.

564.

Motion after trial before Referee.

[Cf. O. XL. r. 5.]

*Effect of Rule.*—This rule is practically new since 1883, and is consequential upon the power given to a referee to enter judgment: O. XXXVI., r. 50, *ante*, p. 305. Under the repealed rules it was held that a referee had no such power: *Longman v. East*, 3 C. P. D. 142.

The procedure is governed by O. LII. as to motions, and not by O. XXXIX. as to new trials: *Dyke v. Cannell*, 11 Q. B. D. 180. As to the limit of time, see r. 9, *infra*.

7. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, the plaintiff may set down a motion for judgment as soon as such issues or questions have been determined. If he does not set down such a motion, and give notice thereof to the other parties within *ten days* after his right so to do has arisen, then after the expiration of such ten days any defendant may set down a motion for judgment, and give notice thereof to the other parties.

565.

Setting down where issues tried.

[O. XL. r. 7.]

This and the two next succeeding rules substantially reproduce the provisions of the repealed O. XL., rr. 7, 8, and 9.

For form of judgment, see App. F, No. 18, *post*, p. 589.

8. Where issues have been ordered to be tried, or issues or questions of fact to be determined in any manner, and some only of such issues or questions of fact have been tried or determined, any party who considers that the result of such trial or determination renders the trial or determination of the others of them unnecessary, or renders it desirable that the trial or determination thereof should be postponed, may apply to the Court or a Judge for leave to set down a motion for judgment without waiting for such trial or determination. And the Court or Judge may, if satisfied of the expediency thereof, give such leave, upon such terms, if any, as shall appear just, and may give any directions which may appear desirable as to postponing the trial of the other issues of fact.

566.

Application to set down where some issues tried.

[O. XL. r. 8.]

See note to last rule. As to when leave will be given, see *Republic of Bolivia v. National Bolivian Navigation Co.*, 24 W. R. 361. Compare O. XXXII., r. 6, *ante*, p. 270, as to moving for judgment on admissions.

9. No motion for judgment shall, except by leave of the Court or a Judge, be set down after the expiration of *one year* from the time when the party seeking to set down the same first became entitled so to do.

567.

Time to set down one year.  
[O. XL. r. 9.]

See note to rule 7.



**Order XL.  
r. 10.**

568.

Power of  
Court on  
motion.[Cf. O.  
XL. r. 10.]

10. Upon a motion for judgment, or upon an application for a new trial, the Court may draw all inferences of fact, not inconsistent with the finding of the jury, and if satisfied that it has before it all the materials necessary for finally determining the questions in dispute, or any of them, or for awarding any relief sought, give judgment accordingly, or may, if it shall be of opinion that it has not sufficient materials before it to enable it to give judgment, direct the motion to stand over for further consideration, and direct such issues or questions to be tried or determined, and such accounts and inquiries to be taken and made, as it may think fit.

*Effect of Rule.*—This rule reproduces the provisions of the repealed O. XL., r. 10, with this important addition, that it gives the Court power to draw inferences of fact not inconsistent with the findings of the jury.

*Cases.*—In *Dawn v. Simmins*, 48 L. J., C. P. 343, the jury found for the plaintiff, and the defendant moved for a new trial. The Court, being of opinion that there was really no evidence in support of the findings, entered judgment for the defendant. See also *Heath v. Pugh*, 6 Q. B. D. 345, at p. 355. In *Hamilton v. Johnson*, 5 Q. B. D. 263, the jury found the facts specially and judgment was entered for the plaintiff. The defendant being dissatisfied with the findings moved for a new trial. The Divisional Court was of opinion that the action was misconceived, and therefore directed judgment to be entered for the defendant. The Court of Appeal confirmed this order. In *Williams v. Mercier*, 9 Q. B. D. 337, the rule was held to apply to interpleader proceedings. See, too, *Yorkshire Banking Co. v. Beatson*, 5 C. P. D. 109, at p. 127, and *Waddell v. Blockey*, 10 Ch. D. 416, as to the power of the Court to give judgment under the repealed rule; and see also *Miller v. Toulmin*, 17 Q. B. D. 603; *S. C.*, 12 App. Cas. 746. The rule applies to appeals from County Courts: *King v. Oxford Co-operative Society*, 51 L. T. 94. See, as to such appeals, O. LIX., rr. 9—17, *post*, pp. 452—454.

*Accounts and inquiries.*—See O. XXXIII., *ante*, p. 272.

**Order XLI.  
rr. 1—3.**

569.

Judgment:  
how entered.Delivery of  
pleadings.

[O. XLI. r. 1.]

**ORDER XLI.****ENTRY OF JUDGMENT.**

1. Every judgment shall be entered by the proper officer in the book to be kept for the purpose. The party entering the judgment shall deliver to the officer a copy of the whole of the pleadings in the cause other than any petition or summons; such copy shall be in print, except such parts (if any) thereof as are by these Rules permitted to be written: Provided that no copy need be delivered of any document a copy of which has been delivered on entering any previous judgment in such cause. The forms in Appendix F. shall be used, with such variations as circumstances may require.

For the forms here referred to, see *post*, p. 585.

*Proper officer.*—See O. LXXI., r. 1, *post*, p. 514. In the Chancery Division the Registrar is the “proper officer.”

*Printing pleadings.*—See O. XIX., r. 9, *ante*, p. 208.

570.

Judgments,  
when to be  
entered in  
Central Office.

[O. LIX. r. 1a.]

571.

Date of entry

2. All judgments in the Queen’s Bench Division shall, if entered in London, be entered in the Central Office.

3. Where any judgment is pronounced by the Court or a Judge in Court, the entry of the judgment shall be dated as of the day on

which such judgment is pronounced, unless the Court or Judge shall otherwise order, and the judgment shall take effect from that date: Provided that by special leave of the Court or a Judge a judgment may be ante-dated or post-dated.

The proviso to this rule was introduced in 1883.

*Alteration of date of order.*—See *Winkley v. Winkley*, 29 W. R. 628; *Turner v. L. & S. W. Ry. Co.*, 17 Eq. 561; Dan. Pr., p. 810; 2 Seton, p. 1546.

*Correcting slips in judgments.*—See O. XXVIII., r. 11, *ante*, p. 245.

*Interest on costs.*—Interest on costs runs from the date of the judgment, and not from the date of the allocatur: *Pyman v. Burt*, W. N. (1884), 100; and see O. XLII., r. 16, *post*, p. 343, and note thereto.

Order XLI.  
rr. 3—5.

where judgment entered in Court.

[Cf. O. XLI. r. 2.]

4. In all cases not within the last preceding Rule, the entry of judgment shall be dated as of the day on which the requisite documents are left with the proper officer for the purpose of such entry, and the judgment shall take effect from that date.

572.

Date of entry in other cases.

[O. XL. r. 3.]

5. Every judgment or order made in any cause or matter requiring any person to do an act thereby ordered shall state the time, or the time after service of the judgment or order, within which the act is to be done, and upon the copy of the judgment or order which shall be served upon the person required to obey the same there shall be indorsed a memorandum in the words or to the effect following, viz. :—

573.

Time to be stated in judgment or order to do specific act.

Memorandum to be indorsed.

“If you, the within-named *A. B.*, neglect to obey this judgment [*or order*] by the time therein limited, you will be liable to process of execution for the purpose of compelling you to obey the same judgment [*or order*].”

*Effect of Rule.*—This rule was introduced in 1883, and is apparently taken from the Chancery Regulation of 7 Jan., 1870, which varied C. O. XXIII., r. 10. Compare O. XLII., r. 1, *post*, p. 339.

The words “You will be liable to process of execution,” are substituted for the words in the Regulation, “You will be liable to have your property sequestered, and you will be liable also to be arrested and committed to prison.” Having regard to the history of the rule, in spite of its wide terms, it appears only to apply to such judgments or orders as may be enforced by process for contempt. See *Land Credit Co. v. Fermoy*, 5 Ch. 323. As to what judgments or orders may be enforced by such process, see O. XLII., rr. 4, 6, 7, and 24.

*Form of memorandum.*—A memorandum in the form given in the Regulation of 7 Jan., 1870, was held sufficient as being to the same effect as the indorsement specified in this rule: *Treherne v. Dale*, 27 Ch. D. 66.

*Where Rule applies.*—This rule applies to an order for the discovery of documents of which service on the solicitor is permitted: *Hampden v. Wallis*, 26 Ch. D. 746. Where, however, the order is merely prohibitive, the rule does not apply: *Selous v. Croydon Local Board*, 53 L. T. 209. In *Treherne v. Dale*, 27 Ch. D. 66, where there were two orders, and the second order did not require the defendant to do any act, but only extended the time for doing the act mentioned in the first order, the indorsement of the first order only was held sufficient.

*Supplemental order fixing time.*—“If the judgment or order omits to fix a time, it is not thereby rendered ineffectual, but the Court will make a supplemental order fixing a time for the performance of the act: *Needham v. Needham*, 1 Hare, 633; *Morley v. Claering*, 30 Beav. 108; *Gilbert v. Endean*, 9 Ch. D. 259, at p. 266. When the judgment or order names a specific day for doing the act and does not merely limit a time after service for that purpose, it must be served before the day named: *Adkins v. Bliss*, 2 De G. & J. 286; or, if the service cannot be effected before that day, an application must be made for an order enlarging the time, or fixing a new period, where the time appointed has



**Order XLI.  
rr. 5—10.**

expired: *Duffield v. Elwes*, 2 Beav. 268. A copy of such supplemental or further order must be indorsed and served in like manner as in the case of the original order: *Adkins v. Bliss*, *ubi sup.*; but see *Treherne v. Dale*, *ubi sup.* The word 'forthwith' is a sufficient expression of time to authorize the issue of an attachment: *Thomas v. Nokes*, 6 Eq. 521": Dan. Pr., pp. 876, 877.

*Service.*—As to mode of service, see O. LXVII., *post*, p. 506. As to substituted service, see Dan. Pr., pp. 878, 879. Personal service upon a solicitor of an order for delivery of his bill of costs was held to be absolutely necessary, and where service had only been effected by serving the clerk of the solicitor, a motion for attachment was dismissed, although the solicitor had written giving reasons for delay: *Re Cunningham*, 55 L. T. 766.

574.  
Duty of officer.  
[O. XL. r. 4.]  
Examination  
of documents.

6. Where under the Acts or these Rules, or otherwise, it is provided that any judgment may be entered upon the filing of any affidavit or production of any document, the officer shall examine the affidavit or document produced, and if the same be regular and contain all that is by law required he shall enter judgment accordingly.

575.  
Judgment on  
order, certifi-  
cate, or return,  
to writ.  
[O. XL. r. 5.]

7. Where by the Acts or these Rules, or otherwise, any judgment may be entered pursuant to any order or certificate, or return to any writ, the production of such order or certificate sealed with the seal of the Court, or of such return, shall be a sufficient authority to the officer to enter judgment accordingly.

For form of judgment pursuant to an order, see App. F, No. 12, *post*, p. 588.

576.  
Master's  
certificate on  
reference.

8. Where reference is made to a Master to ascertain the amount for which final judgment is to be entered, the Master's certificate shall be filed in the Central Office when judgment is entered.

This rule is taken from R. G. H. T., 1853, r. 171. As to such references, see O. XXXVI., r. 57, *ante*, p. 307, which corresponds with s. 94 of the C. L. P. Act, 1852.

577.  
Judgment by  
consent.

9. In any cause or matter where the defendant has appeared by solicitor, no order for entering judgment shall be made by consent unless the consent of the defendant is given by his solicitor or agent.

See note to next rule.

578.  
Judgment by  
consent if  
defendant  
appears in  
person.

10. Where the defendant has not appeared, or has appeared in person, no such order shall be made unless the defendant attends before a Judge and gives his consent in person, or unless his written consent is attested by a solicitor acting on his behalf, except in cases where the defendant is a barrister, conveyancer, special pleader, or solicitor.

This and the preceding rule reproduce R. G. H. T., 1853, rr. 156, 157.

*Filing consent order for judgment.*—By s. 27 of the Debtors Act, 1869 (32 & 33 Vict. c. 62), every Judge's order to enter up judgment by consent must be filed. The effect of non-compliance with this requirement is to render the judgment void as against the creditors of the defendant, not as against the defendant himself: *Gowan v. Wright*, 18 Q. B. D. 201.

It was held in *Ex parte Lennox*, 16 Q. B. D. 315, that an order made by consent at the trial that the pleadings be withdrawn and that the defendant pay the plaintiff a specified sum and taxed costs, was not a "Judge's order made by consent" within s. 27 of the Debtors Act, 1869.

Where moneys attached under a judgment obtained upon a consent order had been paid by the garnishee, it was held, that, inasmuch as the order had not been filed within the proper time, the trustee in bankruptcy of the judgment debtor was entitled to receive from the judgment creditors the amount so paid to them: *Re Smith, Ex parte Brown*, 20 Q. B. D. 321.



ORDER XLII.

I. EXECUTION.

Order XLII.  
rr. 1—3.

579.

1. Where any person is by any judgment or order directed to pay any money, or to deliver up or transfer any property real or personal to another, it shall not be necessary to make any demand thereof, but the person so directed shall be bound to obey such judgment or order upon being duly served with the same without demand.

Effect of service of judgment or order.

*Effect of Rule.*—This rule was introduced in 1883, and is taken from C. O. XXIX., r. 1. The rule does not require every judgment or order to be served, but only such judgments or orders as it may be desired to enforce by process for contempt. For instance, a judgment for money or costs may be enforced by *fi. fa.* or *elegit* under rule 17 without any service of notice under O. XLI., r. 5: see *Land Credit Co. of Ireland v. Fennoy*, 5 Ch. 323, decided upon the corresponding Chancery Orders.

*Service.*—As to service of judgments and orders, see O. LXVII., *post*, p. 506.

580.

2. Where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he shall be considered to have waived or abandoned such judgment or order so far as the same is beneficial to himself, and any other person interested in the matter may on breach or non-performance of the condition take either such proceedings as the judgment or order may in such case warrant, or such proceedings as might have been taken if no such judgment or order had been made, unless the Court or a Judge shall otherwise direct.

Non-performance of condition on which judgment obtained.

This rule is taken from C. O. XXIII., r. 22. As to execution on a conditional judgment where the conditions have been fulfilled, see rule 9, *infra*.

581.

3. A judgment for the recovery by or payment to any person of money may be enforced by any of the modes by which a judgment or decree for the payment of money of any Court whose jurisdiction is transferred by the principal Act might have been enforced at the time of the passing thereof.

Judgment for recovery of money.  
[O. XLII. r. 1.]

*Interpretation of terms.*—"Judgment" includes "decree": S. C. Jud. Act, 1873, s. 100, *ante*, p. 63; "person" includes a body corporate or politic: O. LXXI., r. 1, *post*, p. 514.

SUMMARY OF VARIOUS MODES OF ENFORCING JUDGMENTS:

A. Against property—

- (1.) Personal property—by writ of *fi. fa.*, and other writs in aid thereof.
- (2.) Real property—by writ of *elegit*, or sale of the debtor's interest in the land.
- (3.) Property real and personal—by writ of sequestration; or by appointment of a receiver.
- (4.) Stock or shares, &c.—by charging order.

B. Against the person.—By (a) writ of attachment, (b) order of committal.

*Judgment for recovery by, or payment of money to, any person may be enforced,* (1) by writ of *fi. fa.* or *elegit*; (2) by sequestration; (3) by attachment of debts; (4) by attachment; (5) by committal, in cases within the Debtors Act, 1869; (6) by equitable execution.

**Order XLII.**  
**rr. 3—7.**

*Judgment for payment of money into Court may be enforced by*

- |   |                                      |                           |
|---|--------------------------------------|---------------------------|
|   |                                      | (a) Sequestration.        |
|   | or, where attachment is authorized   | „ (b) Attachment.         |
| „ | for recovery of land:                | „ Writ of possession.     |
| „ | for recovery of property, other than | „ { (a) Writ of delivery. |
|   | land or money                        | „ (b) Attachment.         |
|   |                                      | „ (c) Sequestration.      |
| „ | requiring any person to do any act   | „ (a) Attachment.         |
|   | other than payment of money, or      | „ (b) Committal.          |
|   | to abstain from doing any act        |                           |

An order to do any act may also be enforced by sequestration.

For the above summary see *Dan. Forms*, p. 359. See, also, *Dan. Pr.*, pp. 823—825; 2 *Seton*, pp. 1555—1559.

582.

Judgment for  
payment into  
Court.

[O. XLII.  
r. 2.]

4. A judgment for the payment of money into Court may be enforced by writ of sequestration, or in cases in which attachment is authorised by law, by attachment.

*Sequestration.*—See O. XLIII., r. 6, *post*, p. 350. Under this rule a writ of sequestration for non-compliance with an order of the Court issues without leave: *Sprunt v. Pugh*, 7 Ch. D. 567.

*Attachment.*—Whether attachment can be had in any case depends upon whether the liability is within the exceptions of the Debtors Act: see note to O. XLIV., r. 2, *post*, p. 352.

*Equitable execution.*—An order to pay money into Court can be enforced by appointment of a receiver and injunction: *Stanger-Leathes v. Stanger-Leathes*, W. N. (1882), 71; *Re Coney*, 29 Ch. D. 993; *Re Whiteley*, 56 L. T. 846.

583.

Judgment for  
recovery of  
land.

[O. XLII.  
r. 3.]

5. A judgment for the recovery, or for the delivery of the possession of land may be enforced by writ of possession.

*Writ of possession.*—See O. XLVII., *post*, p. 366.

An order for foreclosure absolute is not a judgment for the recovery of land within the meaning of this rule: *Wood v. Wheeler*, 22 Ch. D. 281.

584.

Judgment for  
recovery of  
other property.

[O. XLII.  
r. 4.]

6. A judgment for the recovery of any property other than land or money may be enforced:

- (a.) By writ for delivery of the property:
- (b.) By writ of attachment:
- (c.) By writ of sequestration.

*Writ of delivery.*—See O. XLVIII., *post*, p. 366. As to issue of such a writ on a judgment by default, see *Ivory v. Cruikshank*, W. N. (1875), 249; *Corbett v. Lewin*, W. N. (1884), 62.

*Writ of attachment.*—See O. XLIV., *post*, p. 352. As to whether “writ of attachment” in this rule means personal process only, or includes also attachment of debt, see *Fellows v. Thornton*, 14 Q. B. D. 335.

*Writ of sequestration.*—See O. XLIII., rr. 6, 7, *post*, pp. 350, 351.

585.

Judgment  
requiring per-  
son to do or  
leave undone.

[O. XLII.  
r. 5.]

7. A judgment requiring any person to do any act other than the payment of money, or to abstain from doing anything, may be enforced by writ of attachment, or by committal.

*Indorsement on judgment.*—See O. XLI., r. 5, *ante*, p. 337.

*Attachment or committal.*—As to the distinction between attachment and committal, see *Harvey v. Harvey*, 26 Ch. D. 644, at p. 654; *Callow v. Young*, 56 L. T. 147; O. XLIV., *post*, p. 352, and notes thereto.

*Breach of injunction.*—In order to justify the committal of a defendant for breach of an injunction it is not necessary that the order should have been served upon



him, if it is proved that he had notice of the order *aliunde*, and knew that the plaintiff intended to enforce it: *United Telephone Co. v. Dale*, 25 Ch. D. 778.

Order XLII.  
rr. 7—10.

*Notice of motion to commit.*—Such notice must be served personally. As to service of notice of motion for attachment, see notes to O. XLIV., r. 2, *post*, pp. 352—355.

*Undertaking.*—An undertaking not being an order to do or abstain from doing an act, *semble*, in case of a breach, committal, not attachment, is still the remedy, as it was before the rules. The order in *Callow v. Young*, 55 L. T. 543, was subsequently stopped by Chitty, J. (W. N. (1886), 209), who directed the case to be re-argued on this point, and as to the necessity for personal service; but the plaintiff's counsel elected to serve a fresh notice of motion, on which the defendant appeared (*ex relatione* Mr. Lavie).

8. In these Rules the term “writ of execution” shall include writs of *fiery facias*, *capias*, *elegit*, sequestration, and attachment, and all subsequent writs that may issue for giving effect thereto. And the term “issuing execution against any party” shall mean the issuing of any such process against his person or property as under the preceding Rules of this Order shall be applicable to the case.

586.  
Meaning of terms “writ of execution,” and “issuing execution.”  
[O. XLII.  
r. 6.]

*Attachment.*—As to whether this term includes “attachment for debt,” see *Fellows v. Thornton*, 14 Q. B. D. 335.

9. Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court or a Judge for leave to issue execution against such party. And the Court or Judge may, if satisfied that the right to relief has arisen according to the terms of the judgment or order, order that execution issue accordingly, or may direct that any issue or question necessary for the determination of the rights of the parties be tried in any of the ways in which questions arising in an action may be tried.

587.  
Judgment for conditional relief.  
[O. XLII.  
r. 7.]

*Waiver of conditional judgment.*—See rule 2, *supra*, as to the waiver of a conditional judgment or order by non-performance of conditions by the party beneficially entitled.

*Defaulting purchaser.*—The judgment in a vendor's action for specific performance directed that, on the plaintiff executing an assignment and delivering to the defendant the deeds of the property, the defendant should pay to the plaintiff the amount certified to be due for purchase-money, interest, and costs. The plaintiff executed the assignment and tendered the deeds to the defendant. The defendant refused to receive the deeds or to pay the money. The plaintiff moved for leave to issue execution for the amount certified to be due on the ground that he had performed the condition. Held, that the plaintiff must deposit the executed assignment and deeds in Court, and on such deposit an order should be drawn up that the defendant should pay the amount certified and the costs of the motion within four days: *Bell v. Denver*, 54 L. T. 729.

10. Where a judgment or order is against a firm, execution may issue:

- (a) Against any property of the partnership;
- (b) Against any person who has appeared in his own name under Order XII., Rule 15, or who has admitted on the pleadings that he is, or who has been adjudged to be a partner;
- (c) Against any person who has been served, as a partner, with the writ of summons, and has failed to appear.

If the party who has obtained judgment or an order claims to be

588.  
Judgment or order against firm.  
[Cf. O. XLII.  
r. 8.]



Order XLII.  
rr. 10—12.

entitled to issue execution against any other person as being a member of the firm, he may apply to the Court or a Judge for leave so to do; and the Court or Judge may give such leave if the liability be not disputed, or if such liability be disputed, may order that the liability of such person be tried and determined in any manner in which any issue or question in an action may be tried and determined.

This rule reproduces the repealed O. XLII., r. 8, with verbal alterations and the addition of the case referred to in O. XII., r. 15, *ante*, p. 159.

*Cases.*—In *Jackson v. Litchfield*, 8 Q. B. D. 474, it was held that when a writ was issued against a firm the judgment must be against the firm; and that judgment could not be entered separately against an individual partner who had failed to appear. Brett, L. J., in that case further intimated that the provision in clause (c) in this rule only applied to a case where the person who failed to appear was the partner personally served with the writ: *Ibid.* at p. 478. As to service on a firm, see O. IX., rr. 6, 7, *ante*, pp. 147, 148.

In *Clark v. Cullen*, 9 Q. B. D. 355, it was held that the plaintiff was not confined to the remedy given by this rule, but might bring an action against the individual members of the firm.

In *Munster v. Cox*, 10 App. Cas. 680, the plaintiff issued a writ against the firm of R. & Co. R. only appeared, and the plaintiff delivered statement of claim against "R., sued as R. & Co." The plaintiff afterwards discovered that C. had been a member of the firm of R. & Co., and applied for an order to amend the judgment by making it against the firm of R. & Co. It was held that the amendment could not be allowed, as the plaintiff must be taken to have elected to sue R. alone.

Where judgment has been obtained against two persons as partners in respect of a partnership debt, a new action cannot be brought in respect of the same debt against a third person who is subsequently discovered to have been a partner with the other two: *Kendall v. Hamilton*, 4 App. Cas. 504.

Where a partnership had been dissolved as to one member before the issue of the writ, it was held that leave could not be given to issue execution against the former partner, until the question of his liability had been determined: *Ex parte Young*, 19 Ch. D. 124. See now O. XVI., r. 14, *ante*, p. 178, as to service of writ upon all parties sought to be made liable.

Where a judgment creditor cannot issue execution without obtaining leave under this rule, he cannot issue a bankruptcy notice without obtaining leave: *Ex parte Ide*, 17 Q. B. D. 755.

589.

Documents to  
be produced.  
[O. XLII.  
r. 9.]

11. No writ of execution shall be issued without the production to the officer by whom the same should be issued of the judgment or order upon which the writ of execution is to issue, or an office copy thereof, showing the date of entry. And the officer shall be satisfied that the proper time has elapsed to entitle the creditor to execution.

*Officer.*—As to cases proceeding in a District Registry, see O. XXXV., r. 4, *ante*, p. 280. As to cases proceeding in London, see O. LXI., r. 1, *post*, p. 455.

590.

*Præcipe* for  
writ.  
[O. XLII.  
r. 10.]

12. No writ of execution shall be issued without the party issuing it, or his solicitor, filing a *præcipe* for that purpose. The *præcipe* shall contain the title of the action, the reference to the record, the date of the judgment, and of the order, if any, directing the execution to be issued, the names of the parties against whom, or of the firm against whose goods, the execution is to be issued; and shall be signed by or on behalf of the solicitor of the party issuing it, or by the party issuing it, if he do so in person. The forms in Appendix G shall be used, with such variations as circumstances may require.

For the forms here referred to, see *post*, p. 590.

As to the effect of these forms in controlling the rights of the parties, see *Schroeder v. Cleugh*, 46 L. J., C. P. 365.

Order XLII.  
rr. 12—16.

13. Every writ of execution shall be indorsed with the name and place of abode or office of business of the solicitor actually suing out the same, and when the solicitor actually suing out the writ shall sue out the same as agent for another solicitor, the name and place of abode of such other solicitor shall also be indorsed upon the writ; and in case no solicitor shall be employed to issue the writ, then it shall be indorsed with a memorandum expressing that the same has been sued out by the plaintiff or defendant in person, as the case may be, mentioning the city, town, or parish, and also the name of the hamlet, street, and number of the house of such plaintiff's or defendant's residence, if any such there be.

This is in accordance with R. G. H. T. 1853, r. 73.

14. Every writ of execution shall bear date of the day on which it is issued. The forms in Appendix H shall be used, with such variations as circumstances may require.

It is so provided as to all writs by O. II., r. 8, *ante*, p. 131. For the forms referred to, see *post*, pp. 596 *et seq.*

For a variation in form, see *Bolton v. Bolton*, 3 Ch. D. 276; *Pyman v. Burt*, W. N. (1884), 100.

The forms in Appendix H can only be varied for the purpose of making them accord with the terms of the judgment or order: *Boswell v. Coaks*, 36 W. R. 65.

15. In every case of execution the party entitled to execution may levy the poundage, fees, and expenses of execution, over and above the sum recovered.

The corresponding repealed rule was taken from the C. L. P. Act, 1852, s. 123.

*Cases.*—A sheriff who, under a *fi. fa.*, recovers the amount of a judgment debt, is entitled to poundage, although after seizure he is paid out by the execution debtor, without a sale of any portion of the goods seized: *Mortimore v. Cragg*, 3 C. P. D. 216. As to the sheriff's right to poundage, see further *Nash v. Dickenson*, L. R., 2 C. P. D. 252; *Bissicks v. Bath Colliery Co.*, 3 Ex. D. 174; *Ex parte Lithgow*, 10 Ch. D. 169. As to costs of inquisition under an *elegit*, see *Mahon v. Giles*, 30 W. R. 123.

*Abortive execution.*—The costs of an abortive execution cannot be added to the judgment debt for the purpose of making up the amount of debt required by the Bankruptcy Act, 1883, s. 6, to support a bankruptcy petition: *Re Long*, *Ex parte Cuddeford*, 20 Q. B. D. 316.

16. Every writ of execution for the recovery of money shall be indorsed with a direction to the sheriff, or other officer or person to whom the writ is directed, to levy the money really due and payable and sought to be recovered under the judgment or order, stating the amount, and also to levy interest thereon, if sought to be recovered, at the rate of 4l. per cent. per annum from the time when the judgment or order was entered or made, provided that in cases where there is an agreement between the parties that more than 4l. per cent. interest shall be secured by the judgment or order, then the indorsement may be accordingly to levy the amount of interest so agreed.

This is in accordance with R. G. H. T. 1853, r. 76; and see C. O. XXIX., r. 10.

*Interest on costs.*—Under the repealed rules and forms interest on costs ran only from the date of the certificate of taxation: *Schroeder v. Cleugh*, 46 L. J., C. P. 365. Under the new forms, interest on costs as well as on the amount recovered, runs, unless otherwise ordered, from the date of the judgment or order: *Pyman*

591.

Indorsement  
of name and  
address.

[O. XLII.  
r. 11.]

Solicitor.

Agent.

Party in  
person.

592.

Date of writ.

[O. XLII.  
r. 12.]

593.

Poundage,  
fees, and  
expenses.

[O. XLII.  
r. 13.]

594.

Indorsement  
of direction to  
sheriff.

[O. XLII.  
r. 14.]



**Order XLII.**  
**rr. 16—19.**

*v. Burt*, W. N. (1884), 100; *Landowners' West of England Co. v. Ashford*, 33 W. R. 41; *Re London Wharfing Co.*, 33 W. R. 836; *Boswell v. Coaks*, 36 W. R. 65.

*Provision of Bankruptcy Act, 1883, as to sale.*—By s. 145 of the Bankruptcy Act, 1883, sales under an execution for more than £20, including incidental expenses, must, unless otherwise ordered, be by public auction.

595.

*fi. fa.* or  
*elegit*; how  
soon they may  
issue.

[*Cf. O. XLII.*  
*r. 15.*]

Payment post-  
poned.

Stay of execu-  
tion.

17. Every person to whom any sum of money or any costs shall be payable under a judgment or order shall, so soon as the money or costs shall be payable, be entitled to sue out one or more writ or writs of *fi. fa.* or one or more writ or writs of *elegit* to enforce payment thereof, subject nevertheless as follows:

- (a) If the judgment or order is for payment within a period therein mentioned, no such writ as aforesaid shall be issued until after the expiration of such period:
- (b) The Court or a Judge may, at or after the time of giving judgment or making an order, stay execution until such time as they or he shall think fit.

This rule is founded on C. O. XXIX., r. 6.

*No elegit over goods.*—By s. 146 of the Bankruptcy Act, 1883, the writ of *elegit* since 1st January, 1884, no longer extends to goods.

*Effect of Rule.*—This rule abrogates the old practice under which, if a judgment creditor issued execution before costs were taxed, he was held to have waived his right to costs: *Harris v. Jewell*, W. N. (1883), 216.

In *Re* — (a solicitor), W. N. (1884), 217, on the petition of a client, the common order was made for the delivery and taxation of his former solicitor's bill of costs, the order directing that the client should within twenty-one days after service of the order and certificate pay the amount. The order and certificate were served on the solicitor, but the amount was not paid. The solicitor then applied for the issue of a *fi. fa.* against the client, and was allowed to issue the writ without personal service of the order and certificate, at his own risk.

596.

Separate writs  
for money and  
costs.

18. Upon any judgment or order for the recovery or payment of a sum of money and costs there may be, at the election of the party entitled thereto, either one writ or separate writs of execution for the recovery of the sum and for the recovery of the costs, but a second writ shall only be for costs and shall be issued not less than eight days after the first writ.

For a form of *fi. fa.* for costs, see App. H, No. 2, *post*, p. 596.

*Effect of Rule.*—The corresponding repealed rule applied only to the Chancery Division. The present rule is general, and has effected an important alteration in the practice of the Queen's Bench Division. It is no longer necessary to wait till costs have been taxed before issuing execution on a judgment for money.

597.

Time for exe-  
cution in other  
cases.

19. A party who has obtained judgment or an order, not being a judgment for payment of money or costs, or for the recovery of land, may issue execution in *fourteen days*, unless the Court or a Judge shall order execution to issue at an earlier or later date with or without terms.

*Effect of Rule.*—This rule was introduced in 1883. Under the repealed rules no interval of time was fixed between judgment and execution. Execution therefore might follow immediately on judgment. Now, unless otherwise ordered, there will be an interval of *fourteen days* between judgment and execution, except where the judgment is for money, costs, or land. The rule seems to follow the analogy of s. 120 of the C. L. P. Act, 1852, and R. G. H. T. 1853, r. 57, which prescribed an interval of fourteen days between verdict and execution.



**20.** A writ of execution if unexecuted shall remain in force for *one year* only from its issue, unless renewed in the manner herein-after provided; but such writ may, at any time before its expiration, by leave of the Court or a Judge, be renewed, by the party issuing it, for *one year* from the date of such renewal, and so on from time to time during the continuance of the renewed writ, either by being marked with a seal of the Court bearing the date of the day, month, and year of such renewal, or by such party giving a written notice of renewal to the sheriff, signed by the party or his solicitor, and bearing the like seal of the Court; and a writ of execution so renewed shall have effect, and be entitled to priority, according to the time of the original delivery thereof.

*Effect of Rule.*—This rule is in substance the same as s. 124 of the C. L. P. Act, 1852. It will be observed that a writ of execution may be renewed by leave without the restrictions imposed in the case of a writ of summons under the present practice: O. VIII., r. 1, *ante*, p. 144.

**21.** The production of a writ of execution, or of the notice renewing the same, purporting to be marked with such seal as in the last preceding Rule mentioned, showing the same to have been renewed, shall be sufficient evidence of its having been so renewed.

This is the same as s. 125 of the C. L. P. Act, 1852.

**22.** As between the original parties to a judgment, or order, execution may issue at any time *within six years* from the recovery of the judgment or the date of the order.

This is in substance the same as s. 128 of the C. L. P. Act, 1852. See further r. 33 of this Order.

*Attachment of debts.*—A garnishee against whom proceedings under O. XLV. have been taken may be ordered to pay to a judgment creditor a debt due from such garnishee to the judgment debtor, though more than six years have elapsed since the judgment: *Fellows v. Thornton*, 14 Q. B. D. 335.

**23.** In the following cases, viz.:

- (a) Where *six years* have elapsed since the judgment or date of the order, or any change has taken place by death or otherwise in the parties entitled or liable to execution;
- (b) Where a husband is entitled or liable to execution upon a judgment or order for or against a wife;
- (c) Where a party is entitled to execution upon a judgment of assets *in futuro*;
- (d) Where a party is entitled to execution against any of the shareholders of a joint stock company upon a judgment recorded against such company, or against a public officer or other person representing such company;

the party alleging himself to be entitled to execution may apply to the Court or a Judge for leave to issue execution accordingly. And such Court or Judge may, if satisfied that the party so applying is entitled to issue execution, make an order to that effect, or may order that any issue or question necessary to determine the rights of the parties shall be tried in any of the ways in which any question in an action may be tried, and in either case such Court or Judge may impose such terms as to costs or otherwise as shall be just.

*Effect of Rule.*—This rule differs from the corresponding repealed rule by including within its operation the three cases specified in clauses (b), (c), and (d). Previously a writ of *scire facias* was necessary before execution could issue in

Order XLII.  
rr. 20—23.

598.

Currency of writ.

Renewal.

[O. XLII.  
r. 16.]

599.

Proof of renewal.

[O. XLII.  
r. 17.]

600.

Execution within six years.

[Cf. O. XLII.  
r. 17.]

601.

Execution after six years, &c.

[Cf. O. XLII.  
r. 19.]

Husband.

Assets *in futuro*.

Shareholder.

**Order XLII.** those cases: see C. L. P. Act, 1852, ss. 131, 132; C. L. P. Act, 1854, s. 91; and  
**rr. 23—25.** 8 & 9 Vict. c. 16, s. 36.

The above rule gives alternative processes, according as the right to execution is or is not sufficiently clear to be enforced summarily by a Judge. If the case be clear, the Judge may order execution to issue. If it be not, he may direct an issue to try the right.

*Cases.*—In *A.-G. v. Birmingham Drainage Board*, 17 Ch. D. 685, the Court refused to allow an injunction, directed to a corporation to restrain a nuisance, to be enforced against its successor in title. In *Mercer v. Lawrence*, 26 W. R. 506, an order that the executor of a plaintiff who had recovered judgment and then died should be at liberty to issue execution was made *ex parte*, but without costs. Leave must be obtained to entitle the executor of a creditor who has obtained a final judgment to issue a bankruptcy notice against the judgment debtor: *Ex parte Woodall*, 13 Q. B. D. 479. Where one of two partners in whose favour judgment has been given, dies, the survivor can issue execution: *Davis v. Andrews*, W. N. (1884), 94.

*Effect of garnishee order on judgment debt.*—A garnishee order absolute attaching a judgment debt operates as a stay of the right to issue execution so far as the judgment creditor is concerned. Until, therefore, the garnishee order has been discharged or leave obtained under this rule to issue execution, the judgment creditor cannot serve a bankruptcy notice against the judgment debtor under s. 4, sub-s. 1 (g), of the Bankruptcy Act, 1883: *Re Connan: Ex parte Hyde*, 20 Q. B. D. 690.

602.

Execution on  
orders.

[O. XLII.  
r. 20.]

**24.** Every order of the Court or a Judge in any cause or matter may be enforced against all persons bound thereby in the same manner as a judgment to the same effect.

See 1 & 2 Vict. c. 110, s. 18.

*Effect of Rule.*—Though “the Orders under the Jud. Act provide that every order may be enforced in the same manner as a judgment, still judgments and orders are kept entirely distinct. It is not said that the word ‘judgment’ in other Acts of Parliament includes an ‘order’”: per Cotton, L. J., *Ex parte Chinery*, 12 Q. B. D. 342, at p. 345. Therefore, a garnishee order absolute is not a “final judgment” against the garnishee within sub-s. 1 (g) of s. 4 of the Bankruptcy Act, 1883: *S. C.*; nor is a “balance order” made in a winding-up, whether voluntary: *Ex parte Whinney*, 13 Q. B. D. 476; or compulsory: *Ex parte Grimwade*, 17 Q. B. D. 357; nor is an order dismissing an action for want of prosecution: *Ex parte Earl of Strathmore*, 20 Q. B. D. 512; nor an order against a husband for alimony *pendente lite*: *Ex parte Henderson*, 36 W. R. 567. “To constitute an order a final judgment nothing more is necessary than that there should be a proper *litis contestatio*, and a final adjudication between the parties to it on the merits:” *Ex parte Moore: In re Faithfull*, 14 Q. B. D. 627, per Lord Selborne, L. C.

*Sequestration.*—In *Sprunt v. Pugh*, 7 Ch. D. 567, a four day order to pay money into Court was made against a receiver who did not comply with the order. It was held that a writ of sequestration to enforce the order might issue without leave.

*Attachment of debts to enforce order for costs.*—An order dismissing an action with costs for non-prosecution may apparently be enforced by attachment of debts under O. XLV.: *Whittaker v. Whittaker*, 7 P. D. 15; *Nott v. Sands*, W. N. (1883), 74; but see *contra*, *Cremetti v. Crom*, 4 Q. B. D. 225. These cases were decided under R. S. C., 1875, O. XLV., which only referred to “judgment,” and did not include “order.”

603.

Commitment of  
judgment  
debtor.

**25.** An order of commitment under the Debtors Act, 1869, shall bear date on the day on which such order was made, and shall continue in force for one year from such date and no longer; but it may be renewed in the manner provided for writs of execution by Rule 20 of this Order.

By s. 103 of the Bankruptcy Act, 1883, since the 1st January, 1884, the procedure under s. 5 of the Debtors Act, 1869, has become bankruptcy business.



26. Any person not being a party to a cause or matter, who obtains any order or in whose favour any order is made, shall be entitled to enforce obedience to such order by the same process as if he were a party to such cause or matter; and any person not being a party to a cause or matter, against whom obedience to any judgment or order may be enforced, shall be liable to the same process for enforcing obedience to such judgment or order as if he were a party to such cause or matter.

This rule substantially reproduces the repealed O. XLII., r. 21, which was taken from C. O. XXIX., r. 2.

27. No proceeding by *audita querela* shall hereafter be used; but any party against whom judgment has been given may apply to the Court or a Judge for a stay of execution or other relief against such judgment, upon the ground of facts which have arisen too late to be pleaded; and the Court or Judge may give such relief and upon such terms as may be just.

*Audita querela* was a process in the nature of an action, whereby a party against whom judgment had been obtained might prevent execution on the ground of some matter of defence which there was no opportunity of raising in the original action: see *Turner v. Davies*, 2 Saunders, 148g, and Notes to Williams' Saunders, Vol. II., p. 439. By R. G. H. T. 1853, r. 79, this process could only be issued by leave of the Court or a Judge.

28. Nothing in this Order shall take away or curtail any right heretofore existing to enforce or give effect to any judgment or order in any manner or against any person or property whatsoever.

**EQUITABLE EXECUTION.**—Where a judgment debtor has no available legal estate, but has some equitable estate or interest, equitable execution may be obtained by the appointment of a receiver. The receiver may be appointed on an application in the original action. A fresh action claiming a receiver is unnecessary: *Salt v. Cooper*, 16 Ch. D. 544; *Smith v. Corcell*, 6 Q. B. D. 75. But if a fresh action be commenced the receiver may be appointed on an interlocutory application: *Anglo-Italian Bank v. Davies*, 9 Ch. D. 275.

**Cases.**—If it be made to appear that a judgment debtor has no legal estate, but has some equitable interest in land, a receiver may be appointed without an *elegit* having been first sued out: *Ex parte Evans*, 13 Ch. D. 252. The appointment of a receiver, being equivalent to actual delivery of the land in execution, registration of the order is, under 27 & 28 Vict. c. 112, unnecessary to secure priority over a purchaser for value without notice: *Re Pope*, 17 Q. B. D. 743. As to enforcing an order for alimony made by the Divorce Court by means of a receiver appointed by the Chancery Division, see *Oliver v. Lowther*, 28 W. R. 381. A judgment for the payment of money into Court by a defaulting trustee out of the jurisdiction may be enforced by appointment of a receiver of his equitable interest in property within the jurisdiction: *Re Coney*, 29 Ch. D. 993. A receiver may be appointed of debts and sums of money payable to the judgment debtor to which garnishee proceedings are not applicable: *Westhead v. Riley*, 25 Ch. D. 413; of a reversionary interest: *Fuggle v. Bland*, 11 Q. B. D. 711; of a sufficient portion of a reversionary legacy to answer plaintiff's debt: *Macnicoll v. Parnell*, 35 W. R. 773; of the separate estate of a married woman: *Re Peace and Waller*, 24 Ch. D. 405; *Bryant v. Bull*, 10 Ch. D. 153.

See further S. C. Jud. Act, 1873, s. 25, sub-s. 8, *ante*, pp. 23, 26, and O. L., Part II., *post*, p. 379.

29. Nothing in this Order shall affect the order in which writs of execution may be issued.

See O. XLIII., r. 5, *post*, p. 350, as to writs in aid.

Order XLII.  
rr. 26—29.

604.  
Execution by  
or against  
person not a  
party.  
[Cf. O. XLII.  
r. 21.]

605.  
*Audita querela*  
abolished.  
Stay of execu-  
tion.  
[O. XLII.  
r. 22.]

606.  
Saving of  
previous  
rights.  
[O. XLII.  
r. 23.]

607.  
Order of writs.  
[O. XLII.  
r. 24.]



Order XLII.  
rr. 30—32.

608.

Enforcement  
of mandatory  
judgment, &c.

**30.** If a mandamus, granted in an action or otherwise, or a mandatory order, injunction, or judgment for the specific performance of any contract be not complied with, the Court or a Judge, besides or instead of proceedings against the disobedient party for contempt, may direct that the act required to be done may be done so far as practicable by the party by whom the judgment or order has been obtained, or some other person, appointed by the Court or Judge, at the cost of the disobedient party, and upon the act being done, the expenses incurred may be ascertained in such manner as the Court or a Judge may direct, and execution may issue for the amount so ascertained, and costs.

*Effect of Rule.*—This rule was introduced in 1883. A similar power of enforcing writs of mandamus was given by s. 74 of the C. L. P. Act, 1854. The present rule extends to injunctions and mandatory orders of all kinds. See, also, S. C. Jud. Act, 1884, s. 14, *ante*, p. 117.

*Cases decided on Rule.*—An order having been made in an action for specific performance that, pursuant to an undertaking given by him, defendant should make a certain road, on his default, the plaintiff moved that he might be at liberty to complete the work at the cost of the defendant. It was held that the case did not fall within the rule, but that the Court would enforce the undertaking by permitting the plaintiff to do the works, with liberty to apply that the defendant should pay the expenses incurred in completing the road: *Mortimer v. Wilson*, 33 W. R. 927.

609.

Corporation.

**31.** Any judgment or order against a Corporation wilfully disobeyed may, by leave of the Court or a Judge, be enforced by sequestration against the corporate property, or by attachment against the directors or other officers thereof, or by writ of sequestration against their property.

This rule was introduced in 1883. It is taken from s. 33 of the C. L. P. Act, 1860.

*Application: how made.*—An application may be made by motion or summons: In *Selous v. Croydon Rural Sanitary Authority*, 53 L. T. 209, an objection that the application ought to have been by summons was overruled.

610.

Application  
for examina-  
tion of judg-  
ment debtor.  
[Cf. O. XLV.  
r. 1.]

## II. DISCOVERY IN AID OF EXECUTION.

**32.** When a judgment or order is for the recovery or payment of money, the party entitled to enforce it may apply to the Court or a Judge for an order that the debtor liable under such judgment or order, or in the case of a corporation that any officer thereof, be orally examined, as to whether any and what debts are owing to the debtor, and whether the debtor has any and what other property or means of satisfying the judgment or order, before a Judge or an officer of the Court as the Court or Judge shall appoint; and the Court or Judge may make an order for the attendance and the examination of such debtor, or of any other person, and for the production of any books or documents.

*Effect of Rule.*—This rule reproduces the repealed O. XLV., r. 1, which was taken from s. 60 of the C. L. P. Act, 1854, with the addition that power is given to examine the officer of a corporation. The two succeeding rules were introduced in 1883.

*"Any other person."*—There is no power under this rule to make an order for examination of any person other than the debtor liable on the judgment, or, in the case of a corporation, other than an officer of the defendant corporation: *Irwell v. Eden*, 18 Q. B. D. 588. It has been held, however, that a judgment creditor is entitled to an order for the examination of a garnishee: *Cowan v. Cartlill*, 33 W. R. 583.

*Debtor entitled to conduct-money.*—A debtor to be examined is entitled to conduct-money. An attachment was refused for disobedience to an order to come up for examination, without an affidavit showing tender of conduct-money, reason for not examining the debtor at his own residence, and that there was no other means of ascertaining the debt: *Protector Endowment Co. v. Whitlam*, 36 L. T. 467.

*Nature of examination.*—The examination of the debtor is intended to be of a strict and searching character: *Republic of Costa Rica v. Strousberg*, 16 Ch. D. 8.

*Order to pay debt by instalments.*—Where an order had been made for payment of a judgment debt by instalments, and no default had been made, the Court refused to allow an attachment to issue against the debtor for disobedience of an order for his examination previously obtained under this rule: *Hayton v. Beall*, 29 W. R. 333.

Order XLII.  
rr. 32—34.

33. In case of any judgment or order other than for the recovery or payment of money, if any difficulty shall arise in or about the execution or enforcement thereof, any party interested may apply to the Court or a Judge, and the Court or Judge may make such order thereon for the attendance and examination of any party or otherwise as may be just.

611.  
Judgments  
other than for  
money.

See note to last rule, and see rules 1 and 23 of this Order, for cases likely to be affected by this rule. Under the Judgments Extension Act, 1868 (31 & 32 Vict. c. 54), an English judgment may be enforced in Scotland or Ireland, and in like manner a Scotch or Irish judgment may be enforced in England.

*Divorce Actions.*—The Court has no jurisdiction in a divorce action to make an order directing the attendance for examination of persons not parties to the cause: *Hyde v. Hyde*, 36 W. R. 708.

34. The costs of any application under the last two preceding Rules or either of them, and of any proceedings arising from or incidental thereto, shall be in the discretion of the Court or a Judge, or in the discretion of such officer as in Rule 32 mentioned, if the Court or a Judge shall so direct.

612.  
Costs of appli-  
cations.

## ORDER XLIII.

### I. WRITS OF FIERI FACIAS, ELEGIT, AND SEQUESTRATION.

Order XLIII.  
r. 1.

1. Writs of *fieri facias* and of *elegit* shall have the same force and effect as the like writs have heretofore had, and shall be executed in the same manner in which the like writs have heretofore been executed.

613.  
Effect of *fi. fa.*  
and *elegit.*  
[O. XLIII.  
r. 1.]

*Interest on costs.*—The form of writ of *fi. fa.* given in the Appendix to the repealed rules provided that interest on costs should run from the date of the certificate of taxation, and this it was held repealed the 1 & 2 Vict. c. 110, s. 17, according to which interest on costs ran from the date of the judgment or order: *Schroeder v. Cleugh*, 46 L. J., C. P. 365. The form of writ of *fi. fa.* given in the Appendix to the present Rules differs from the form in the repealed rules, and provides that interest on costs is to run from the date of the judgment or order, unless otherwise ordered. See App. H, Nos. 1 and 2, *post*, p. 596. See, also, O. XLII. r. 16, *ante*, p. 343, and cases there cited.

*Non-return of writ of fi. fa., &c.*—As to non-return of writ of *fi. fa.* by the sheriff, see *Hall v. Ley*, 12 Ch. D. 795. As to the practice on moving for an attachment against the sheriff for not returning the writ, see O. XLIV. and notes thereto, *post*, p. 352; O. LII. rr. 2 and 3, *post*, p. 387, and *Jupp v. Cooper*, 5 C. P. D. 26. As to the practice on moving for an order calling on the sheriff to pay money levied under a *fi. fa.*, see O. LII. r. 2, *post*, p. 387; and compare *Delmar v. Fremantle*, decided under the repealed rules, 3 Ex. D. 237.

**ELEGIT.**—Under s. 146 of the Bankruptcy Act, 1883, which came into operation on the 1st of January, 1884, the writ of *elegit* no longer extends to goods. See



Order XLIII. *Hough v. Windus*, 12 Q. B. D. 224. For form of writ of *elegit*, see App. H, rr. 1—6.

*Bankruptcy Act, 1883*.—As to the effect of a receiving order on the rights of an execution creditor, see ss. 45, 46 of the Bankruptcy Act, 1883 (46 & 47 Vict. c. 52). The delivery of land of a judgment creditor in execution by the sheriff under a writ of *elegit*, is a “seizure” of the land, so as to make the execution of the judgment creditor “complete” within s. 45; and a receiving order made against the judgment debtor after the delivery in execution, but before the return of the writ, does not oust the right of the judgment creditor: *Re Hobson*, 33 Ch. D. 493. By s. 145 of the Act, where the sheriff sells the goods of a debtor under an execution for a sum exceeding £20, the sale is to be by public auction, unless the Court otherwise orders.

614.  
Writ of *venditioni exponas*.

2. Where it appears, upon the return of any writ of *fieri facias*, that the sheriff or other officer has by virtue of such writ seized, but not sold, any goods of the person directed to pay a sum of money or costs, the person to whom such sum of money or costs is payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out a writ of *venditioni exponas*.

This rule was introduced in 1883, and is taken from C. O. XXIX., r. 9. For form of writ, see App. H, No. 4, *post*, p. 598.

615.  
Writs against beneficed clerks.

3. Where it appears, upon the return of any writ of *fieri facias* or any writ of *elegit*, that the person against whom such writ was so issued is a beneficed clerk, and has no goods or chattels, nor any lay fee in the bailiwick of the sheriff to whom such writ was directed, the person to whom the sum of money or costs mentioned in such writ is or are payable shall, immediately after such writ with such return shall have been filed as of record, be at liberty to sue out one or more writs of *fieri facias de bonis ecclesiasticis*, or one or more writs of sequestration.

This rule is taken from C. O. XXIX., r. 11.

For forms of writs, see App. H, Nos. 5, 6, and 7, *post*, pp. 598, 599. See *Rabbitts v. Woodward*, W. N. (1869), 152, 179.

616.  
Execution of writs against beneficed clerks.

4. Such writs as in the last preceding Rule mentioned, when sealed, shall be delivered to the Bishop to be executed by him, and such writs when returned by the Bishop, shall be delivered to the parties or solicitors by whom respectively they were sued out, and shall thereupon be filed as of record in the Central Office; and for the execution of such writs the Bishop or his officers shall not take or be allowed any fees other than such as are or shall be from time to time allowed by lawful authority.

This rule is taken from C. O. XXIX., r. 13.

617.  
Writs in aid. [O. XLIII. r. 2.]

5. Writs of *venditioni exponas*, *distringas nuper vice comitem*, *fieri facias de bonis ecclesiasticis*, *sequestrari facias de bonis ecclesiasticis*, and all other writs in aid of a writ of *fieri facias* or of *elegit*, may be issued and executed in the same cases and in the same manner as heretofore.

For form of writ of *distringas* against ex-sheriff, see App. H, No. 14, *post*, p. 603.

618.  
Writ of sequestration. In what cases. [Cf. O. XLVII. r. 1.]

6. Where any person is by any judgment or order directed to pay money into Court or to do any other act in a limited time, and after due service of such judgment or order refuses or neglects to obey the same according to the exigency thereof, the person prosecuting such judgment or order shall, at the expiration of the



time limited for the performance thereof, be entitled, without obtaining any order for that purpose, to issue a writ of sequestration against the estate and effects of such disobedient person. Such writ of sequestration shall have the same effect as a writ of sequestration in Chancery had before the commencement of the principal Act, and the proceeds of such sequestration may be dealt with in the same manner as the proceeds of writs of sequestration were before the same date dealt with by the Court of Chancery.

This rule substantially reproduces the repealed O. XLVII., r. 1, and supersedes Gen. Ord. 7 Jan., 1870, rr. 3 and 7. Those rules are not expressly repealed.

**SEQUESTRATION.**—A writ of sequestration is a writ directed to commissioners requiring them to take possession of all the property real and personal of the person against whom it is issued. Originally it was a mere process of contempt, analogous to attachment for compelling obedience to the orders of the Court. But, upon final process, it has long been the practice to apply the proceeds of the sequestration in satisfaction of the liability in respect of which it issues.

*In what cases.*—A writ of sequestration may issue in the cases following, viz.:—

A. *Without further order:*—

- (1.) On a judgment or order directing any person to pay money or costs in a limited time: Debtors Act, 1869, s. 8; Ord., 7 Jan., 1870, r. 3.
- (2.) On a judgment or order for payment of money into Court: O. XLII., r. 4.
- (3.) On a judgment or order for the recovery of any property other than land or money: O. XLII., r. 6.
- (4.) On a judgment or order directing any person to pay money into Court, or to do any other act in a limited time: O. XLIII., r. 6.

B. *By order:*—

- (1.) Upon any judgment or order against a corporation wilfully disobeyed: O. XLII., r. 31.
- (2.) To enforce payment of costs: r. 7, *infra*.
- (3.) Upon return to a writ of attachment: Ord., 7 Jan., 1870, r. 6.

See Dan. Forms, pp. 404, 405, n. (f). As to sequestration generally, see Dan. Pr., pp. 908—925; Chitt. Arch., pp. 907—913; 2 Seton, pp. 1577—1579.

*Judgment for a debt.*—It is doubtful whether a writ of sequestration is available to enforce a simple judgment for a debt: *Ex parte Nelson*, 14 Ch. D. 41.

*What property liable.*—The following have been held liable to sequestration: dividends remaining in Court on a fund settled to the separate use of a married woman: *Claydon v. Finch*, 15 Eq. 266; the deposit on an appeal: *Conn v. Garland*, 9 Ch. 101; pensions for past services, when not inalienable by law or statute: *Wilcock v. Terrell*, 3 Ex. D. 323; *Sansom v. Sansom*, 4 P. D. 69; *Dent v. Dent*, 1 P. & M. 366; a balance in the hands of bankers: *Miller v. Huddleston*, 22 Ch. D. 233. The pension of an officer in the Indian army cannot be sequestered: *Birch v. Birch*, 8 P. D. 163; *Lucas v. Harris*, 18 Q. B. D. 127. See Dan. Pr., pp. 914—916; Morgan, p. 454.

*Divorce actions.*—It is the proper practice of the Court in a divorce action now, as it was in the Divorce Court formerly, to issue writs of sequestration in general form against the “estate and effects” of a married woman, but the writ can only operate on property not subject to a restraint on anticipation: *Hyde v. Hyde*, 36 W. R. 708.

*Prohibitive orders.*—This rule applies to something to be done in a limited time, and not to something which has been ordered not to be done at all: *Selous v. Croydon Rural Sanitary Authority*, 53 L. T. 209.

*Payment into Court.*—Sequestration to enforce an order for payment into Court now issues without leave: *Sprunt v. Pugh*, 7 Ch. D. 567.

*Receiver.*—Where sequestration could not be obtained a receiver was appointed: *Bryant v. Ball*, 10 Ch. D. 153.

*Effect of sequestration on lands.*—See Dan. Pr., pp. 916—920, and cases there cited.

*Service of judgment or order.*—This is necessary before a writ of sequestration can issue: O. XLI., r. 5, *ante*, p. 337. Personal service may be dispensed with in special cases, as, for instance, if the party knows of the order and keeps out of the way to avoid service: *Hyde v. Hyde*, 36 W. R. 708.

Order XLIII.

r. 6.

Effect.

**Order XLIII.**  
r. 7.

619.

No subpoena  
for costs.[O. XLVII.  
r. 2.]

7. No subpoena for the payment of costs, and, unless by leave of the Court or a Judge, no sequestration to enforce such payment, shall be issued.

For an instance in which leave was granted, see *Snow v. Bolton*, 17 Ch. D. 433. An application under this rule should be made in Chambers, *ibid*.

**Order XLIV.**  
rr. 1, 2.

620.

Effect of  
attachment.[O. XLIV.  
r. 1.]**ORDER XLIV.****ATTACHMENT.**

1. A writ of attachment shall have the same effect as a writ of attachment issued out of the Chancery Division has heretofore had.

An attachment is a writ directed to the sheriff, commanding him to attach the person against whom it is issued, and have him before the Court to answer his contempt. The writ must be returned by the sheriff, like other writs of execution. The practice in Chancery was formerly governed by the Gen. Ord. of 7th Jan., 1870.

2. No writ of attachment shall be issued without the leave of the Court or a Judge, to be applied for on notice to the party against whom the attachment is to be issued.

*Effect of Rule.*—The repealed rule, which was identical with the present rule, introduced an important change in the Chancery Division. A writ cannot now, as it could before the Judicature Acts, issue as of right without an order, granted after notice to the party: *Abud v. Riches*, 2 Ch. D. 528. This was already the rule in the Common Law Courts, except in the case of an attachment against a sheriff for disobeying an order to return a writ; in which case the rule was made absolute *ex parte*: see R. G. H. T. 1853, r. 168. That exception is now abolished: see *Jupp v. Cooper*, 5 C. P. D. 26; *Eynde v. Gould*, 9 Q. B. D. 335, decided under the repealed rule.

**ATTACHMENT.**

*Attachment, when issued.*—A writ of attachment may issue in the cases following, viz.:—

- (1.) Upon a judgment or order for the recovery of property other than land or money: O. XLII., r. 6.
- (2.) Upon a judgment or order requiring any person to do any act other than the payment of money, or to abstain from doing anything: O. XLII., r. 7.
- (3.) Upon a judgment or order for the recovery by, or payment to, any person of money in cases within the exceptions specified in the Debtors Act, 1869, s. 4: O. XLII., r. 3.
- (4.) Upon a judgment or order for payment into Court in cases within the exceptions specified in the Debtors Act, 1869: O. XLII., r. 4.
- (5.) Upon a judgment or order against a corporation wilfully disobeyed, against the directors or officers thereof: O. XLII., r. 31.
- (6.) Upon non-compliance with an order to answer interrogatories, or for discovery or inspection: O. XXXI., r. 21.
- (7.) Where a solicitor, having been served with an order against his client for interrogatories, or discovery, or inspection, neglects without reasonable cause to give notice thereof to his client: O. XXXI., r. 23.
- (8.) Upon default by a solicitor to enter an appearance, &c., pursuant to his written undertaking: O. XII., r. 18.

As to attachment generally, see Dan. Pr., pp. 875—891; 2 Seton, pp. 1566—1569; Chitt. Arch., pp. 941—954. For the above summary, see Dan. Forms, p. 395, n. (g).

**COMMITTAL.**

*Committal, when obtainable.*—A person may be committed to prison in the cases following, viz.:—

- (1.) For disobedience to a judgment or order requiring him to do any act other than the payment of money, or to abstain from doing anything: O. XLII., r. 7.



(2.) Special contempts. [See, as to these, Dan. Pr., pp. 897—900; 2 Seton, pp. 1588—1590.]

Order XLIV.  
r. 2.

(3.) For contempt by sheriff in not making a return to a writ of execution, or in not bringing in the body of a person ordered to be attached or committed: O. LII., r. 11.

An order for committal might also have been made, prior to 1st January, 1884, upon a judgment or order for payment of money to any person, upon proof of means, and neglect or refusal to pay: 32 & 33 Vict. c. 62, s. 5. But by the combined effect of 46 & 47 Vict. c. 52, s. 103, Bankruptcy Rules, 1883, r. 265, and order of Lord Chancellor, 1st January, 1884, the jurisdiction and powers under s. 5 of the Debtors Act, 1869, have been assigned to, and are now exercisable by, the Judge to whom bankruptcy business is assigned. No order for committal can therefore be obtained, except by application in bankruptcy, in a case within s. 5 of the Debtors Act, 1869: Dan. Forms, p. 401, n. (a).

*Distinction between attachment and committal.*—See as to this, *Harvey v. Harvey*, 26 Ch. D. 644, at p. 654. "Committal was the proper remedy for doing a prohibited act, and attachment was the proper remedy for neglecting to do some act ordered to be done": *Callow v. Young*, 56 L. T. 147. Though the distinction between attachment and committal has been for most purposes abolished, yet it will be maintained in some cases; and a plaintiff who had moved for leave to issue a writ of attachment against a defendant for his contempt, committed in breach of an undertaking given in an action not to carry on a certain business, was allowed to amend his notice of motion by asking for committal as well as for attachment: *Callow v. Young* (*ubi sup.*).

*Object of committal.*—"The object of the discipline enforced by the Court in the case of a contempt of Court is not to vindicate the dignity of the Court or the person of the Judge, but to prevent undue interference with the administration of justice": *Helmors v. Smith*, 35 Ch. D. 449, per Bowen, L. J., at p. 455.

*Contempt of Court.*—Conduct amounting to an interference with the administration of justice constitutes a contempt of Court. "It is not necessary, to constitute a contempt of Court, that the contempt should be in Court, or that it should be a contempt of a Judge sitting in Court. All that is necessary is that it should be a contemptuous interference with judicial proceedings, in which the Judge is acting as a judicial officer": *Re Johnson*, 20 Q. B. D. 68, per Lord Esher, M. R., at pp. 71, 72. As to the principles on which the jurisdiction to imprison for contempt should be exercised, see per Mathew, J., in *Re Davies*, 21 Q. B. D. 236; see, also, per Jessel, M. R., in *Re Clements*, 46 L. J., Ch. 375.

#### CASES WITHIN EXCEPTIONS IN DEBTORS ACT, 1869, s. 4.

"Person acting in a fiduciary capacity."—See *Morris v. Ingram*, 13 Ch. D. 338; *Hutchinson v. Hartmont*, W. N. (1877), 29; *Phosphate Sewage Co. v. Hartmont*, 2 Ch. D. 811. An auctioneer who has received the purchase-money of property sold by him, and has failed to obey an order directing him to pay it to the receiver in an action, is "a person acting in a fiduciary capacity" within the meaning of the Act, and is therefore liable to attachment: *Crowther v. Elgood*, 34 Ch. D. 691. The special remedy afforded by the Act is a remedy intended to be given only as between trustee and *cestui que trust*, and is not a remedy for a mere creditor: *Re Firmin*, 57 L. T. 45; *Preston v. Etherington*, 37 Ch. D. 104.

*Possession or control.*—An attachment may be ordered to be issued against a trustee who has had trust money in his possession, although he may have spent it before the order was made: *Middleton v. Chichester*, 6 Ch. 152; and where he has admitted that the trust fund is in his possession, but refuses to pay it to the persons interested, or into Court: *Digby v. Turner*, 28 L. T. 296; and where, although he personally has not misappropriated the fund, it has been lost through his having permitted it to be dealt with by a co-trustee: *Evans v. Bear*, 10 Ch. 76; but a trustee is not liable to be attached for non-payment of trust money which he has neglected to get in: *Ferguson v. Ferguson*, 10 Ch. 661; or of money, such as interest, which is not shown to have been in his possession or under his control: *Middleton v. Chichester*, 6 Ch. 152; *Re Hickey*, 35 W. R. 53. "That a person may be liable to attachment under the exception, it is not necessary that he should have been guilty of fraud. One object of the Act is stated to be the punishment of fraudulent debtors, but we cannot on that ground confine to cases of fraud the exception made by the Act from the protective clause in favour of debtors": *Preston v. Etherington*, 37 Ch. D. 104, at p. 110, per Cotton, L. J. See Dan. Pr., p. 881; *Morgan*, p. 189.



**Order XLIV.**  
**r. 2.**

*Default by solicitor.*—A solicitor who does not pay the balance found due from him upon the taxation of his bill of costs, under the common order for that purpose, is liable to attachment: *Re Rush*, 9 Eq. 147; but a solicitor who has been ordered to pay costs, simply as an unsuccessful litigant, is to be treated in the same way as any person in default for non-payment of costs, and is not liable to be attached: *Re Hope*, 7 Ch. 523. Where a solicitor, the town agent of a country solicitor, made default in payment of a sum ordered to be paid by him in an action for an account of his agency, it was held that he was liable to imprisonment under s. 4, sub-s. 3, as a person acting in a fiduciary capacity, but not under sub-s. 4, as a solicitor ordered to pay money in his capacity of an officer of the Court: *Litchfield v. Jones*, 36 Ch. D. 530. Where a solicitor makes default in payment of a sum of money which he has been ordered to pay in his character of an officer of the Court, he is not the less liable to an order for attachment because in the interval between the date of the order and the time fixed for payment he has been struck off the rolls: *Re Strong*, 32 Ch. D. 342. An order for payment against a solicitor is punitive, and not a mere civil process: *Re Dudley*, 12 Q. B. D. 44; *Re Preston*, 11 Q. B. D. 545. The existence of a receiving order against the solicitor is, therefore, no bar to an application for attachment: *Re Wray*, 56 L. J., Ch. 737.

*Periods to be considered.*—Of the three possible periods for ascertaining whether a person ordered to pay and making default held the character of a solicitor, and was as such within the exception of s. 4, sub-s. 4 of the Debtors Act, 1869, viz.:—(1.) of the act done; (2.) of the order made; (3.) of the default committed, that to be looked to, is, if not the first, at the latest the second period. In the cases of a trustee or person acting in a fiduciary capacity (and, per Fry, L. J., in that of a solicitor also), the period to be looked at is that of the act done: *Re Strong*, 32 Ch. D. 342.

*Policy of Act.*—The Act was intended for the punishment of a fraudulent or dishonest debtor, and is in that sense vindictive: *Marris v. Ingram*, 13 Ch. D. 338; *Re Knowles*, 52 L. J., Ch. 685. But the Court has jurisdiction to inquire into the circumstances of the case, and where there has been no actual fraud may refuse to allow an attachment to issue: *Holroyde v. Garnett*, 20 Ch. D. 532.

*Discretion of Judge.*—When a Judge, on an application for leave to issue a writ of attachment against a trustee, makes an order in the exercise of the discretion given to him by the Debtors Act, 1878, the C. A. will not interfere on the merits: *Preston v. Etherington*, 37 Ch. D. 104; and see *Crowther v. Elgood*, 34 Ch. D. 691. There must be a gross case of miscarriage to induce the C. A. to interfere: *Re Wray*, 36 Ch. D. 138.

#### ATTACHMENT GENERALLY: PRACTICE.

*Service of Order.*—The order, for breach of which leave is asked to issue an attachment, must be served with the indorsement prescribed by O. XLI., r. 5, ante, p. 337.

*Application, how made.*—The application may be made by summons: *Salm Kyrburg v. Posnanski*, 13 Q. B. D. 218; but see *Re Knight*, W. N. (1883), 162, where Bacon, V.-C., held that the order must be obtained on motion. In practice the application is, in the Chancery Division, constantly made by summons. But in a very recent case the C. A. expressed an opinion that the application should be brought on in open Court by motion: *Re Davis*, W. N. (1888), 193.

*Form of application.*—The notice of motion or summons must state in general terms the grounds of the application: O. LII., r. 4, post, p. 388.

*Evidence.*—A copy of any affidavit intended to be used must be served with the notice of motion: O. LII., r. 4; *Litchfield v. Jones*, 25 Ch. D. 64; *Petty v. Daniel*, 34 Ch. D. 172. Whether this rule applies where the application is by summons, *quære*?

*Service of application.*—Service upon the solicitor on the record has been held sufficient: *Browning v. Sabin*, 5 Ch. D. 511; *Richards v. Kitchen*, 25 W. R. 602; *Re Luxmore*, W. N. (1888), 63; but see *Mann v. Porry*, 44 L. T. 248. And it has been held that notice of motion is sufficiently served by being left at the place of residence of the party sought to be affected: *Re A Solicitor*, 14 Ch. D. 152. Substituted service may be ordered: *Tilney v. Stansfeld*, 28 W. R. 582; *Houcarth v. Houcarth*, 11 P. D. 95. In the case of *Re Davis*, W. N. (1887), 252, North, J., expressed an opinion that leave to effect substituted service was not required, on the ground that personal service of the notice of motion was un-

necessary. With regard to the cases above cited as to service, it may be remarked that where the attachment would not have issued as of course, without an order, before the Debtors Act, and before the R. S. C., as, *e. g.*, attachment in lieu of committal for breach of injunction, *semble*, service of the notice of motion on the solicitor is not sufficient. *Browning v. Sabin, ubi sup.*, only decided that the notice required for the first time by R. S. C. was sufficient if served on the solicitor, as before the rule there would have been no notice at all; but it cannot be taken to have decided that a motion for attachment instead of committal deprived the party against whom the application was made of his right to have personal notice of the motion [*ex relatione* Mr. Lavie].

*Irregular arrest.*—Where a writ of attachment was issued against a defendant for his contempt in not complying with an order for discovery, and after issue of the writ, but before it was enforced, the order was complied with and notice duly given, but defendant was nevertheless arrested; it was held that the arrest was irregular, and that it was the duty of the plaintiff's solicitor to have stayed the enforcement of the attachment: *Gay v. Hancock*, 56 L. T. 726.

*Costs.*—The provisions of O. LXV., r. 1, *post*, p. 471, apply to an application for attachment. The costs are therefore in the discretion of the Court, and are not limited to a fixed amount: *Abud v. Riches*, 2 Ch. D. 528. Costs should be asked for and disposed of on the application for the attachment: *Ibid.* A defendant who has cleared his contempt cannot be detained in prison for non-payment of the costs of his contempt, but the Court in ordering his discharge will make it part of the order that he do pay the costs of his contempt, and of the motion to discharge him: *Jackson v. Mawby*, 1 Ch. D. 86.

*Power of sheriff.*—The sheriff may break open an outer door in executing a writ of attachment issued for contempt of Court in non-compliance with an order: *Harvey v. Harvey*, 26 Ch. D. 644.

*Appeal.*—An appeal lies from an order refusing to commit for contempt, although where the refusal has been simply an exercise of judicial discretion the C. A. will be slow to alter the decision of the Court below: *Jarmain v. Chatterton*, 20 Ch. D. 493.

*Form of writ.*—See App. H, No. 12, *post*, p. 602.

## ORDER XLV.

### ATTACHMENT OF DEBTS.

1. The Court or a Judge may, upon the *ex parte* application of any person who has obtained a judgment or order for the recovery or payment of money, either before or after any oral examination of the debtor liable under such judgment or order, and upon affidavit by himself or his solicitor stating that judgment has been recovered, or the order made, and that it is still unsatisfied, and to what amount, and that any other person is indebted to such debtor, and is within the jurisdiction, order that all debts owing or accruing from such third person (hereinafter called the garnishee) to such debtor shall be attached to answer the judgment or order; and by the same or any subsequent order it may be ordered that the garnishee shall appear before the Court or a Judge or an officer of the Court, as such Court or Judge shall appoint, to show cause why he should not pay to the person who has obtained such judgment or order the debt due from him to such debtor, or so much thereof as may be sufficient to satisfy the judgment or order.

*Effect of Order.*—The right to discovery in aid of a judgment by examination of the judgment debtor is given and regulated by O. XLII., r. 32, which corresponds with the repealed O. XLV., r. 1. The present Order, supplemented by the rule above cited, reproduces in substance the sections relating to attachment of debts contained in the C. L. P. Acts of 1854 and 1860.

*Effect of Rule.*—This rule reproduces in substance the repealed O. XLV., r. 2, which was taken from s. 61 of the C. L. P. Act, 1854. The rule authorizes a Judge to do two things: first, to attach the debt, as to the effect of which see the

Order XLIV.  
r. 2.

Order XLV.  
r. 1.

622.  
Order attaching debts  
[Cf. O. XLV.  
r. 2.]

Order on  
garnishee to  
show cause.



Order XLV.  
r. 1.

next rule; secondly, to order its payment to the judgment creditor. The latter power may be exercised by the same order which attaches the debt, or by a subsequent one. It may also be exercised with respect to debts accruing, as well as debts owing. Such debts may be ordered to be paid when they fall due; and it is not necessary to wait and obtain a fresh order for payment of each as it becomes payable: *Tapp v. Jones*, L. R., 10 Q. B. 591.

**ATTACHABLE DEBTS.**—What the Court or Judge is empowered to attach is, debts owing or accruing to the judgment debtor. Rent due by a tenant is a debt attachable: *Mitchell v. Lee*, L. R., 2 Q. B. 259. So is money in the hands of a sheriff, being the proceeds of an execution levied by him: *Murray v. Simpson*, 8 Ir. C. L., App. xlv. So is a debt for which a cheque has been given by the garnishee, if the cheque is dishonoured or stopped: *Cohen v. Hale*, 3 Q. B. D. 371. So are moneys in the hands of a receiver appointed in an administration action: *Rapier v. Wright*, 14 Ch. D. 638; and so is interest on railway stock guaranteed by one railway company to another under an arrangement confirmed by statute: *Bouch v. Sevenoaks Ry.*, 4 Ex. D. 133. Upon a judgment against a company, money in the hands of an official liquidator may be attached: *Ex parte Turner*, 2 D., F. & J. 354. Upon a judgment against an executor, as such, a debt due to the testator's estate may be attached: *Burton v. Roberts*, 6 H. & N. 93; *Fowler v. Roberts*, 2 Giff. 226. And where such an order of attachment has been made, its enforcement will not be restrained on the ground that a decree for administration has been made after the order; or, it would seem, after the judgment, though before the order: *Ibid.* A sum already accrued due to a retired police-constable under 11 & 12 Vict. c. 14, may be attached. *Semble*, the Wages Attachment Abolition Act, 1870 (33 & 34 Vict. c. 30), only applies to inferior Courts of record, and not to the High Court: *Booth v. Trail*, 12 Q. B. D. 8.

*Debt due to one of several judgment debtors.*—After the analogy of a *fi. fa.*, under which the goods of any one of those against whom it is issued may be taken, a debt due to one of several judgment debtors may be attached to satisfy the judgment against all: *Miller v. Mynn*, 1 E. & E. 1075.

*Debts accruing.*—The rule in express terms applies to debts accruing, as well as debts actually owing: see *Sparks v. Younge*, 8 Ir. C. L. 251; *Tapp v. Jones*, L. R., 10 Q. B. 591; *Rapier v. Wright*, 14 Ch. D. 638, at p. 643.

**WHAT DEBTS NOT ATTACHABLE.**—An order cannot be made to attach a debt due from a firm described in the order by the firm name: *Walker v. Rooke*, 6 Q. B. D. 631.

There must be a debt *presently owing*; therefore the future income of the tenant for life of a trust fund is not attachable: *Webb v. Stenton*, 11 Q. B. D. 518.

Where W., the judgment debtor, had assigned a legacy to B. upon certain trusts, it was held that there was no debt, legal or equitable, owing from B. to W. which could be attached: *Vyse v. Brown*, 13 Q. B. D. 199.

The debt must be an absolute, not a conditional debt: *Howell v. Metropolitan Railway*, 19 Ch. D. 508.

Unliquidated damages cannot be attached: *Johnson v. Diamond*, 11 Ex. 73; even though their amount has been ascertained by the verdict of a jury, but no judgment yet had: *Jones v. Thompson*, E. B. & E. 63. But where a garnishee order absolute had been made on default of appearance, the claim of the judgment debtor being unliquidated, it was held that, though no attachable debt was in existence at the date of the order, the plaintiff could issue execution: *Randall v. Lithgow*, 12 Q. B. D. 525. A notice to treat under the Lands Clauses Act, on which nothing has been done, does not create an attachable debt: *Richardson v. Elmit*, 2 C. P. D. 9; see too *Howell v. Met. Ry.*, 19 Ch. D. 508. The proceeds of a judgment paid into a County Court are not attachable as a debt due from the registrar to the judgment debtor: *Dolphin v. Layton*, 4 C. P. D. 130. A debt due to a judgment debtor and another not a party to the judgment cannot be attached: *Macdonald v. Tacquah Gold Mine Company*, 13 Q. B. D. 535. Money paid into Court in an administration action by executors of a person indebted to the judgment debtor cannot be attached: *Slevens v. Phelps*, 10 Ch. 417; nor purchase-money paid into Court under the Lands Clauses Act: *Howell v. Met. Ry.*, 19 Ch. D. 508; and where the judgment debtor is the holder of a promissory note not yet due, the sum represented by the note cannot be attached as a debt due from the promisor: *Pyne v. Kinna*, 11 Ir. R., C. L. 40. Money in the hands of a liquidator in a voluntary winding-up of a company cannot be attached by the judgment creditor of a shareholder: *Mack v. Ward*, W. N. (1884), 16; nor can a dividend in bankruptcy payable to the judgment debtor: *Boys v. Simpson*, 8 Ir. R. C. L. 523.



*Equitable debt.*—Before S. C. Jud. Act, 1873, ss. 24 and 25, it was held that a debt could only be attached to which the judgment debtor was himself entitled both at law and in equity, and not one which he had assigned: *Hirsch v. Coates*, 18 C. B. 757. Since the Judicature Acts, it has been held that an equitable debt may be attached: *Wilson v. Jackson*, W. N. (1875), 232.

*Pensions, &c.*—As to pensions and superannuation allowances, see *Innes v. East India Co.*, 17 C. B. 351; *Dent v. Dent*, 1 P. & M. 366; *Ex parte Hawker*, 7 Ch. 214; *Birch v. Birch*, 8 P. D. 163; *Booth v. Trail*, 12 Q. B. D. 8. The pension of an officer, being by s. 141 of the Army Act, 1881, made inalienable by the voluntary act of the person entitled to it, cannot be taken in execution even though such pension be given solely in respect of past services, and an order cannot be made appointing a receiver of such pension: *Lucas v. Harris*, 18 Q. B. D. 127.

*Officer's pay.*—The pay of a commissioned officer is not attachable: *Apthorpe v. Apthorpe*, 12 P. D. 192; and see *Barwick v. Reade*, 1 Hy. Black. 627.

*Salary from local board.*—See *Hall v. Pritchett*, 3 Q. B. D. 215.

*Wages, &c.*—By the Merchant Shipping Act, 1854 (17 & 18 Vict. c. 104), s. 233, seamen's wages, whether due or accruing, cannot be attached. By 33 & 34 Vict. c. 30, the wages of a labourer, workman, or servant cannot be attached. The salary of a secretary to a company is not servant's wages within this Act, and may be attached: *Gordon v. Jennings*, 9 Q. B. D. 45. By 45 & 46 Vict. c. 72, s. 3, neither the salary of nor compensation to customs officers can be attached.

"Person who has obtained a judgment or order."—The assignee of a judgment debt is a person who has obtained a judgment within the meaning of the rule, and is entitled to a garnishee order attaching debts due to the judgment debtor: *Goodman v. Robinson*, 18 Q. B. D. 332.

"Judgment or order."—An order for the payment of costs is apparently a judgment within the meaning of this rule: *Whittaker v. W.*, 7 P. D. 15; and see *Nott v. Sands*, W. N. (1853), 74; but see *contra*, *Cremetti v. Crom*, 4 Q. B. D. 225. These cases were decided under the rule of 1875, which only referred to "judgment," and did not include "order." A garnishee order for costs should not be obtained without first applying for payment of them: *Nott v. Sands* (*ubi sup.*).

*Date of judgment.*—A garnishee may be ordered to pay to a judgment creditor a debt due from such garnishee, although more than six years have elapsed since the judgment: *Fellows v. Thornton*, 14 Q. B. D. 335.

*Practice.*—See Dan. Pr., pp. 941–948; Dan. Forms, pp. 420–423; Chitt. Arch., pp. 927–938; Chitt. Forms, pp. 461–471.

*Form of order.*—See App. K, No. 39, *post*, p. 624.

*Affidavit.*—It is not necessary for the affidavit in support of a garnishee order to state the amounts due from the persons indebted to the judgment debtor: *Lucy v. Wood*, W. N. (1884), 58.

2. Service of an order that debts, due or accruing to a debtor liable under a judgment or order, shall be attached, or notice thereof to the garnishee, in such manner as the Court or Judge shall direct, shall bind such debts in his hands.

623.  
Service of  
garnishee  
order.  
[O. XLV.r.3.]

This rule reproduces the repealed O. XLV., r. 3, which was taken from s. 62 of the C. L. P. Act, 1854.

*Effect of Rule.*—The effect of the words "shall bind such debts" has often undergone discussion. Under the Bankruptcy Act, 1849, it was held that a judgment creditor who had obtained an order attaching a debt, or an order for payment, was a creditor holding security, but not a creditor having a lien within the meaning of s. 184 of that Act; and that, therefore, if bankruptcy intervened before actual payment, the assignee, not the judgment creditor, was entitled: *Holmes v. Tutton*, 5 E. & B. 65; *Turner v. Jones*, 1 H. & N. 878; *Tilbury v. Brown*, 30 L. J., Q. B. 46. But a payment by the garnishee in obedience to an order to pay, and to avoid an execution, where he either had no notice of adjudication in bankruptcy, or, what was the same thing, the registration of a deed of arrangement under the Bankruptcy Act, 1861, or where he had no opportunity of applying to set aside the order, was a good payment as far as he was concerned: *Wood v. Dunn*, L. R., 2 Q. B. 73. The enactments of the

**Order XLV.**  
**rr. 2, 3.**

Bankruptcy Act, 1869, as to the rights of secured creditors, were entirely different from those which were in force when the above-cited cases were decided: *Slater v. Pinder*, L. R., 7 Ex. 95; *Ex parte Rooke*, 6 Ch. 795. Under the Act of 1869, a creditor who had obtained and served a garnishee order was held to be in the same position as an execution creditor who had seized, and to have a charge on the debt, which was good against the trustee in bankruptcy: *Emanuel v. Bridger*, L. R., 9 Q. B. 286; *Ex parte Joselyne*, 8 Ch. D. 327. *Ex parte Greenway*, 16 Eq. 619, seems to be overruled. But in *Ex parte Pillers*, 17 Ch. D. 653, it was held that there must be actual payment of the attached debt to the garnishor in order to bring him within the protection afforded to secured creditors under s. 95 of the Act of 1869.

*Bankruptcy Act, 1883.*—Under the Bankruptcy Act, 1883, s. 45, a creditor who has attached a debt due to him cannot retain the benefit of the attachment against the trustee, unless he has received the debt before the date of the receiving order and before notice of the presentation of any bankruptcy petition by or against the debtor, or of the commission of any available act of bankruptcy by the debtor. Payment into Court by the garnishee is not “receipt of the debt” by the judgment creditor within the section: *Butler v. Wearing*, 17 Q. B. D. 182. It was held under s. 12 of the Act of 1869, which corresponds with s. 9 of the Act of 1883, that a judgment creditor, who, before the filing of a liquidation petition by his debtor, had obtained and served a garnishee order nisi attaching debts due to the debtor, was a secured creditor, and was, therefore, entitled to the attached debts as against the trustee in the liquidation, even though they did not become actually payable until after the commencement of the liquidation: *Ex parte Joselyne*, 8 Ch. D. 327; but see *Ex parte Pillers*, 17 Ch. D. 653. Where the garnishee order nisi had been obtained, but not served, before the date of the petition, it was held that the creditor was not a secured creditor: *In re Stanhope Silkstone Collieries Co.*, 11 Ch. D. 160; and see *Hamer v. Giles*, 11 Ch. D. 942.

*Garnishee order not a final judgment.*—A garnishee order absolute is not a “final judgment” against the garnishee within sub-sect. 1 (g) of s. 4 of the Bankruptcy Act, 1883, and the judgment creditor who has obtained the order cannot issue a bankruptcy notice against the garnishee in respect of it: *Ex parte Chinery*, 12 Q. B. D. 342.

*Set-off by garnishee.*—The debts are bound from the date of the order of attachment; and no set-off, and nothing affecting the state of the accounts between the garnishee and the judgment debtor, arising after that date, can be taken into account: *Tapp v. Jones*, L. R., 10 Q. B. 591; though it would seem that a set-off existing at that date might avail: *Sampson v. Seaton Ry. Co.*, L. R., 10 Q. B. 28. The garnishee cannot set off a debt due to him by the judgment creditor: *Ibid.*

*Solicitor's lien.*—As to the effect of an attachment upon a solicitor's lien, see *Hough v. Edwards*, 1 H. & N. 171; *Eisdell v. Coningham*, 28 L. J., Ex. 213; *Sympton v. Prothero*, 26 L. J., Ch. 671; *Hamer v. Giles*, 11 Ch. D. 942 (order nisi). A charging order obtained by the plaintiff's solicitor, under 23 & 24 Vict. c. 127, s. 28, charging the amount recovered by plaintiff in the hands of the sheriff, has priority over garnishee proceedings by a judgment creditor of the plaintiff: *Dallow v. Garrod*, 14 Q. B. D. 543.

*Debt must be in the hands of garnishee.*—The order binds the debt in the hands of the garnishee only; and, therefore, if the amount has been paid into Court, it is not bound, and the Court will not interfere to give effect to the order: *Stevens v. Phelps*, 10 Ch. 417.

*Secured debt.*—Where a debt is secured, a garnishee order does not affect the security: *Chatterton v. Watney*, 17 Ch. D. 259.

*Equitable charge.*—A garnishee order binds only so much of the debt owing from the garnishee as the debtor can honestly deal with at the time the garnishee order nisi was obtained and served; consequently it is postponed to a prior equitable assignment of the debt: *Re General Horticultural Co.*, 32 Ch. D. 612.

3. If the garnishee does not forthwith pay into Court the amount due from him to the debtor, liable under a judgment or order, or



an amount equal to the judgment or order, and does not dispute the debt due or claimed to be due from him to such debtor, or if he does not appear upon summons, then the Court or Judge may order execution to issue, and it may issue accordingly, without any previous writ or process, to levy the amount due from such garnishee, or so much thereof as may be sufficient to satisfy the judgment or order.

**Order XLV.  
rr. 3—7.**

against  
garnishee.  
[O. XLV. r. 4.]

This reproduces the repealed O. XLV., r. 4, which was taken from s. 63 of the C. L. P. Act, 1854. For a form of order under this rule, see App. K, No. 40, *post*, p. 625.

4. If the garnishee disputes his liability, the Court or Judge, instead of making an order that execution shall issue, may order that any issue or question necessary for determining his liability be tried or determined in any manner in which any issue or question in an action may be tried or determined.

625.

Issue where  
garnishee  
disputes his  
liability.

[O. XLV. r. 5.]

Cf. C. L. P. Act, 1854, s. 64.

5. Whenever in proceedings to obtain an attachment of debts it is suggested by the garnishee that the debt sought to be attached belongs to some third person, or that any third person has a lien or charge upon it, the Court or a Judge may order such third person to appear, and state the nature and particulars of his claim upon such debt.

626.

Order for third  
person to  
appear.

[O. XLV. r. 6.]

This rule reproduces the repealed O. XLV., r. 6, which was taken from s. 29 of the C. L. P. Act, 1860.

*Trust money.*—Where in garnishee proceedings it is suggested that the money sought to be attached is trust money, an order absolute should not be made, but the money should be ordered into Court to abide the inquiry: *Roberts v. Death*, 8 Q. B. D. 319.

6. After hearing the allegations of any third person under such order, as in Rule 5 mentioned, and of any other person whom by the same or any subsequent order the Court or a Judge may order to appear, or in case of such third person not appearing when ordered, the Court or Judge may order execution to issue to levy the amount due from such garnishee, or any issue or question to be tried or determined according to the preceding Rules of this Order, and may bar the claim of such third person, or make such other order as such Court or Judge shall think fit, upon such terms, in all cases, with respect to the lien or charge (if any) of such third person, and to costs, as the Court or Judge shall think just and reasonable.

627.

Proceeding as  
to claim of  
third person.

[O. XLV. r. 7.]

This rule reproduces the repealed O. XLV., r. 7, which was taken from s. 30 of the C. L. P. Act, 1860. An order made by consent under this rule is final: *Eade v. Winsor*, 47 L. J., Q. B. 584.

7. Payment made by or execution levied upon the garnishee under any such proceeding as aforesaid shall be a valid discharge to him as against the debtor, liable under a judgment or order, to the amount paid or levied, although such proceeding may be set aside, or the judgment or order reversed.

628.

Discharge of  
garnishee.

[Cf. O. XLV.  
r. 8.]

This rule reproduces the repealed O. XLV., r. 8, which was taken from s. 65



**Order XLV.  
rr. 7—9.**

of the C. L. P. Act, 1854: see *Mayor of London v. Joint Stock Bank*, 6 App. Cas. 393, as to discharge by payment under compulsion of law.

*Conditional debt.*—The provisions of this rule do not apply to a conditional debt: *Howell v. Met. Ry.*, 19 Ch. D. 503.

629.  
Debt attach-  
ment book.  
[O. XLV. r. 9.]

8. There shall be kept by the proper officer a debt attachment book, and in such book entries shall be made of the attachment and proceedings thereon, with names, dates, and statements of the amount recovered, and otherwise; and copies of any entries made therein may be taken by any person upon application to the proper officer.

This rule reproduces the repealed O. XLV., r. 9, which was taken from s. 66 of the C. L. P. Act, 1854.

630.  
Costs.  
[O. XLV.  
r. 10.]

9. The costs of any application for an attachment of debts, and of any proceedings arising from or incidental to such application, shall be in the discretion of the Court or a Judge.

This rule reproduces the repealed O. XLV., r. 10, which was taken from s. 67 of the C. L. P. Act, 1854.

10. [For this Rule relating to garnishee orders against a firm, see R. S. C. August, 1888, r. 2, *post*, p. 516 *b*.]

**Order XLVI.  
r. 1.****ORDER XLVI.****CHARGING ORDERS, DISTINGAS, AND STOP ORDERS.**

631.  
Charging  
order.  
[O. XLVI.  
r. 1.]

1. An order charging stock or shares may be made by any Divisional Court or by any Judge, and the proceedings for obtaining such order shall be such as are directed, and the effect shall be such as is provided by the Acts 1 & 2 Vict. c. 110, ss. 14 and 15, and 3 & 4 Vict. c. 82, s. 1.

*Distringas.*—The rules as to distringas occur amongst rules relating to execution. But the process of distringas is in no sense of the nature of execution. It is simply a process by which any person claiming stock or shares may restrain the Bank of England or other company from parting with the stock or shares, or any dividend upon them. The practical effect of a distringas is to secure that the property is not dealt with without notice to the person putting on the distringas. The writ was originally issued out of the Equity side of the Exchequer. But when the equity jurisdiction of that Court was taken away by 5 Vict. c. 5, the Act transferred the power of issuing it to the Court of Chancery. The present rules allow proceedings in lieu of a distringas to be taken in any division.

**PROVISIONS OF 1 & 2 VICT. c. 110:—**

Judgment a  
charge on  
public stock  
and shares in  
companies,  
&c., by order  
of a Judge.

By s. 14:—"If any person against whom any judgment shall have been entered up in any of Her Majesty's Superior Courts at Westminster shall have any Government stock, funds, or annuities, or any stock or shares of or in any public company in England (whether incorporated or not), standing in his name in his own right, or in the name of any person in trust for him, it shall be lawful for a Judge of one of the Superior Courts, on the application of any judgment creditor, to order that such stock, funds, annuities or shares, or such of them or such part thereof respectively as he shall think fit, shall stand charged with the payment of the amount for which judgment shall have been so recovered, and interest thereon; and such order shall entitle the judgment creditor to all such remedies as he would have been entitled to if such charge had been made in his favour by the judgment debtor, provided that no proceedings shall be taken to have the benefit of such charge until after the expiration of six calendar months from the date of such order."

By s. 15:—"And in order to prevent any person against whom judgment shall have been obtained from transferring, receiving, or disposing of any stock, funds, annuities, or shares, hereby authorized to be charged for the benefit of the judgment creditor under an order of a Judge, be it further enacted that every order of a Judge charging any Government stock, funds, or annuities, or any stock or shares in any public company, under this Act, shall be made, in the first instance, *ex parte*, and without any notice to the judgment debtor, and shall be an order to show cause only; and such order, if any Government stock, funds, or annuities, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is to be affected by such order, shall restrain the Governor and Company of the Bank of England from permitting a transfer of such stock in the meantime, and until such order shall be made absolute or discharged; and if any stock or shares of or in any public company, standing in the name of the judgment debtor in his own right, or in the name of any person in trust for him, is or are to be affected by any such order, shall in like manner restrain such public company from permitting a transfer thereof; and that if, after notice of such order to the person or persons to be restrained thereby, or in case of corporations to any authorized agent of such corporation, and before the same order shall be discharged or made absolute, such corporation, or person or persons shall permit any such transfer to be made; then, and in such case, the corporation, or person or persons, so permitting such transfer, shall be liable to the judgment creditor for the value or the amount of the property so charged and so transferred, or such part thereof as may be sufficient to satisfy his judgment; and that no disposition of the judgment debtor in the meantime shall be valid or effectual as against the judgment creditor; and, further, that unless the judgment debtor shall, within a time to be mentioned in such order, show to a Judge of one of the said Superior Courts sufficient cause to the contrary, the said order shall, after proof of notice thereof to the judgment debtor, his attorney, or agent, be made absolute; provided that any such Judge shall, upon the application of the judgment debtor, or any person interested, have full power to discharge or vary such order, and to award such costs upon such application as he may think fit."

**Order XLVI.**  
r. 1.

Order of Judge to be made in first instance *ex parte*, and, on notice to the bank or company, to operate as a *distringas*.

Order may be discharged or varied.

**PROVISIONS OF 3 & 4 VICT. c. 82, s. 1:—**

By 3 & 4 Vict. c. 82, s. 1, passed to remove doubts as to the construction of the former Act, it is enacted that "The aforesaid provisions of the said Act shall be deemed and taken to extend to the interest of any judgment debtor, whether in possession, remainder, or reversion, and whether vested or contingent, as well in any such stocks, funds, annuities, or shares as aforesaid, as also in the dividends, interest, or annual produce of any such stock, funds, annuities, or shares; and whenever any such judgment debtor shall have any estate, right, title, or interest, vested or contingent in possession, remainder, or reversion, in, to, or out of any such stocks, funds, annuities, or shares, as aforesaid, which now are or shall hereafter be standing in the name of the Accountant-General of the Court of Chancery, or the Accountant-General of the Court of Exchequer, or in, to, or out of the dividends, interest, or annual produce thereof, it shall be lawful for such Judge to make any order as to such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in the same way as if the same had been standing in the name of a trustee of such judgment debtor; provided always, that no order of any Judge as to any stock, funds, annuities, or shares standing in the name of the Accountant-General of the Court of Chancery, or the Accountant-General of the Court of Exchequer, or as to the interest, dividends, or annual produce thereof, shall prevent the Governor and Company of the Bank of England, or any public company, from permitting any transfer of such stocks, funds, annuities, or shares, or payment of the interest, dividends, or annual produce thereof, in such manner as the Court of Chancery or the Court of Exchequer respectively may direct, or shall have any greater effect than if such debtor had charged such stock, funds, annuities, or shares, or the interest, dividends, or annual produce thereof, in favour of the judgment creditor, with the amount of the sum to be mentioned in any such order."

Provisions extended to contingent interests in stock.

*Accountant-General.*—The Paymaster-General now fills the place of the Accountant-General: Chancery Funds Act, 1872, ss. 4, 6. See also S. C. Funds Act, 1883, *post*, p. 725.

*What chargeable.*—A charging order can be made in respect of a judgment debtor's contingent interest: *Cragg v. Taylor*, L. R., 2 Ex. 131; *South Western*



**Order XLVI.**  
**rr. 1, 2.**

*Loan Co. v. Robertson*, 8 Q. B. D. 17. Where a testatrix left her whole estate and effects to trustees, in trust to pay debts and legacies, with a direction to pay the legacies as soon as her means could be converted into cash, and as to the residue in trust for the judgment debtor and others, it was held that the judgment debtor, though interested in the proceeds of the estate, was not interested in stock and shares of which the estate in part consisted, so as to make them chargeable: *Dixon v. Wrench*, L. R., 4 Ex. 154. Stock standing in the name of trustees in trust for another besides the judgment debtor can be charged: *South Western Loan Co. v. Robertson*, 8 Q. B. D. 17. Cash in Court can be charged: *Brereton v. Edwards*, 21 Q. B. D. 226; and see 1 Seton, p. 305, No. 3; p. 307, No. 8. The order in the last-named case was supported on appeal, but on different grounds, the C. A. considering that the charging order could not be maintained under s. 14 of 1 & 2 Vict. c. 110, or s. 1 of 3 & 4 Vict. c. 82, but that, under the general jurisdiction of the Court, any Judge could now make an effectual order charging a judgment debt upon a sum of cash standing to the debtor's credit in an action in the Chancery Division: *Brereton v. Edwards*, W. N. (1888), 189; 32 Sol. J. 691.

*Judgment must be for a specific sum.*—A charging order cannot be made in respect of a specific sum which is to be ascertained, or for costs that are to be taxed: *Widgery v. Tepper*, 6 Ch. D. 364, overruling *Burns v. Irving*, 3 Ch. D. 291. But it may be made upon a judgment for a specific and ascertained sum, even though not payable until a future day: *Bagnall v. Carlton*, 6 Ch. D. 130.

*Application: how made.*—The application is made by summons: see Dan. Pr., p. 939; Dan. Forms, p. 418; Chitt. Forms, pp. 478—483.

*To what Judge application to be made.*—The above rule is express that the application may be to any Judge: see *Hopewell v. Barnes*, 1 Ch. D. 630; 1 Seton, p. 305, No. 3.

*Effect of order.*—A charging order, when made absolute, operates as from the date of the order *nisi*, and binds the stock charged as from that date: *Haly v. Barry*, 3 Ch. 452. A charging order upon dividends of stock standing in the books of the Bank of England in the names of legal owners in trust for the judgment debtor does not throw any duty upon the bank as to the distribution of the fund; it is bound simply to pay to the legal owners: *Churchill v. Bank of England*, 11 M. & W. 323. A charging order has no greater effect than an instrument of charge executed by the judgment debtor would have had: *Re Onslow*, 20 Eq. 677. A judgment creditor cannot, by obtaining a charging order upon money in Court belonging to his debtor, obtain priority over a previous mortgage: *Re Bell*, 34 W. R. 363. An order *nisi* charging shares is not an execution against the goods of a debtor within s. 45 of the Bankruptcy Act, 1883: *Ex parte Hutchinson*, 16 Q. B. D. 515. A charging order cannot affect the income of a fund to which a married woman is entitled for her separate use without power of anticipation: *Stanley v. Stanley*, 7 Ch. D. 589.

*Effect of death of judgment debtor.*—Where an order had been made charging stock, and it appeared that the judgment debtor was dead when the order *nisi* was made, the Court discharged the order: *Finney v. Hinde*, 4 Q. B. D. 102.

*Sale of shares subject to charging order.*—Where the plaintiff had obtained a charging order on certain shares of the defendant, it was held that the Court had no jurisdiction to order the sale of the shares, but that separate proceedings must be taken: *Leggott v. Western*, 12 Q. B. D. 287.

*Proceedings for protection of interest of judgment creditor.*—Although a judgment creditor cannot proceed to obtain the benefit of his charge on a fund until the expiration of six calendar months from the date of the charging order (1 & 2 Vict. c. 110, s. 14), he may take proceedings to protect his interest in the meantime: *Watts v. Jeffereyes*, 15 Jur. 435; *Bristed v. Wilkins*, 3 Hare, 235; *Reece v. Taylor*, 5 De G. & S. 480. Thus, he has been held entitled to an order in the meantime to restrain the debtor from receiving the dividends on the fund charged: *Watts v. Jeffereyes*, *ubi sup.*; see Dan. Pr., p. 940.

*Forms of order.*—See App. K, Nos. 27, 28, *post*, p. 619.

*District Registry.*—Proceedings relating to charging orders *nisi* may be taken in a District Registry: O. XXXV. r. 5, *ante*, p. 280.

632.  
Writ of distringas not to issue.

[O. XLVI.  
r. 2a.]

**2.** No writ of *distringas* shall hereafter be issued under the Act 5 Vict. c. 5, s. 5.



3. In the following Rules of this Order the expression "Company" includes the Governor and Company of the Bank of England and any other public company, whether incorporated or not, and the expression "Stock" includes shares, securities, and money.

For Rule 3A, substituting the words "dividends thereon" for the word "money," see R. S. C. August, 1888, r. 3, *post*, p. 516 b.

4. Any person claiming to be interested in any stock standing in the books of a Company may, on an affidavit by himself or his solicitor in the Form No. 27 in Appendix B, with such variations as circumstances may require, and on filing the same in the Central Office with a notice in the Form No. 22 in the same Appendix, with such variations as circumstances may require, and on procuring an office copy of the affidavit and a duplicate of the filed notice authenticated by the seal of the Central Office, serve the office copy and duplicate notice on the company.

*Effect of Rule.*—By giving a notice under this rule by way of *distringas* a legatee does not accept shares in respect of which such notice is given, so that he cannot afterwards disclaim them: *Hobbs v. Wayet*, 36 Ch. D. 256.

As to filing a further notice without an affidavit in support, see r. 14 of this Order, *infra*.

5. There shall be appended to the affidavit a note stating the person on whose behalf it is filed, and to what address notices (if any) for that person are to be sent.

6. All such notices shall be deemed to have been duly sent if sent through the post by a prepaid letter directed to that person at the address so stated, or at any such substituted address as hereinafter mentioned, whether the person to whom the notice is sent is living or not.

7. The address so stated may, from time to time, be altered by the person by or on whose behalf the affidavit is filed, but no notice sent by post before the alteration to the address originally given or for the time being substituted therefor shall be affected by any subsequent alteration. Any such alteration of address may be made by service of a memorandum thereof on the Company in the manner required for service of a notice under this Order.

8. The service of the office copy of the affidavit and of the duplicate of the filed notice shall have the same force and effect against the Company as a writ of *distringas* duly issued under the Act 5 Vict. c. 5, s. 5, would have had against the Bank of England if these Rules had not been made.

*Effect of Rule.*—This rule is a modification of the corresponding repealed rule O. XLVI., r. 7, according to which the proceeding substituted for the writ of *distringas* remained in force for four years only from the date of service of the notice, and the repealed O. XLVI., r. 8, provided for the renewal of the notice. Under the present rules the notice will remain in force and operate until revoked in accordance with the next succeeding rule.

*Effect of distringas.*—See Dan. Pr., 5th ed., p. 1452; *Re Marquis of Hertford*, 1 Hare, 584; *Wilkins v. Sibley*, 4 Giff. 442.

9. A notice filed under Rule 4 of this Order may at any time be withdrawn by the person by whom or on whose behalf it was given on a written request signed by him, or its operation may be made to cease by an order to be obtained by motion on notice, or by peti-

Order XLVI.  
rr. 3—9.

633.

Meaning of  
"company"  
and "stock."

[O. XLVI.  
r. 3.]

634.

Filing and  
service of affi-  
davit and  
notice as to  
stock.

[O. XLVI.  
r. 4.]

635.

Address of  
claimant in  
affidavit.

[O. XLVI.  
r. 5.]

636.

Notices to be  
sent through  
post.

[O. XLVI.  
r. 5.]

637.

Alteration of  
address.

[O. XLVI.  
r. 6.]

638.

Affidavit and  
notice to have  
same effect  
as *distringas*.

[Cf. O.  
XLVI. r. 7.]

639.

Withdrawal or  
discharge of  
notice.

[O. XLVI.  
r. 9.]

**Order XLVI.**  
**rr. 9—12.**

tion, or by summons at Chambers duly served by any other person claiming to be interested in the stock sought to be affected by the notice.

See note to last rule.

For form of notice, see Dan. Forms, p. 701. The Bank of England requires the witness attesting the signature to the notice to be a solicitor in actual practice. For form of notice of motion or summons, see Dan. Forms, p. 701.

640.  
Effects of  
request for  
transfer of  
stock or pay-  
ment of  
dividend.  
[O. XLVI.  
r. 10.]

10. If, whilst a notice filed under Rule 4 of this Order continues in force, the Company on whom it is served receive from the person in whose name the stock specified in the notice is standing, or from some person acting on his behalf or representing him, a request to permit the stock to be transferred or to pay the dividends thereon, the Company shall not, by force or in consequence of the service of the notice, be authorized, without the order of the Court or a Judge, to refuse to permit the transfer to be made or to withhold the payment of the dividends for more than *eight days* after the date of the request.

This rule is taken from C. O. XXVII., r. 4.

*Practice.*—Where the Bank gave notice that an application had been made to allow the transfer of stock and to pay the dividends thereon, and an *ex parte* motion was made to restrain the Bank from dealing with the stock, the Court granted an interim injunction over the next motion day, and required notice of the order to be served on the legal owners of the stock: *Re Blaksley's Trusts*, 23 Ch. D. 549.

*Undertaking as to damages.*—Upon an application on behalf of a married woman for an injunction restraining the Bank of England from permitting the transfer of a sum of stock, the Court held that the sole undertaking of the married woman to be answerable in damages must be accepted: *Re Prynne*, 53 L. T. 465.

641.  
Amendment of  
description of  
stock.  
[O. XLVI.  
r. 11.]

11. If the person who files a notice under Rule 4 of this Order desires to correct the description of the stock referred to in the filed notice, he may file an amended notice and serve on the Company a duplicate thereof sealed with the seal of the Central Office, and in that case the service of the notice shall be deemed to have been made on the day on which the amended duplicate is so served.

642.  
Costs of stop  
orders.

12. Where any moneys or securities are in Court to the general credit of any cause or matter, or to the account of any class of persons, and an order is made to prevent the transfer or payment of such moneys or securities, or any part thereof, without notice to the assignee of any person entitled in expectancy or otherwise to any share or portion of such moneys or securities, the person by whom any such order shall be obtained on the shares of such moneys or securities affected by such order shall be liable, at the discretion of the Court or a Judge, to pay any costs, charges, and expenses which, by reason of any such order having been obtained, shall be occasioned to any party to the cause or matter, or any persons interested in any such moneys or securities.

This rule is taken from C. O. XXVI., r. 1.

**STOP ORDERS.**—As to stop orders generally, see Dan. Pr., pp. 1633 *et seq.*; 1 Seton, pp. 300—305.



*Application.*—The application should be made by summons: *Dan. Pr.*, p. 1634; *Walsh v. Wason*, 22 W. R. 676; *French v. Wynne*, 17 W. R. 198. For form of summons, see *Dan. Forms*, p. 702. It has, however, been decided that where the fund has been paid into Court under the Trustee Relief Act, and exceeds 1,000*l.*, and there has been no previous application relating to it, a petition, and not a summons, is the proper mode of application: *Re Toogood's Trusts*, 56 L. T. 703; and see *Re Day's Trusts*, 49 L. T. 499.

Order XLVI.  
rr. 12—14.

*Effect of order.*—"A stop order does not decide anything as to the rights of the parties; it may, therefore, be made on a fund the title to which is in dispute (*Hawkesley v. Gowan*, 12 W. R. 1100), and need not in general state that it is made without prejudice (*Lucas v. Peacock*, 9 Beav. 177):" *Dan. Pr.*, p. 1635.

*Priority acquired by stop order.*—An incumbrancer who has obtained a stop order and duly lodged it thereby obtains priority over a previous incumbrancer who has not done so: *Dan. Pr.*, p. 1636, n. (g), and cases there cited. An incumbrancer who merely gives notice to the trustees will be postponed to one who obtains a stop order, although the notice is given before the stop order is obtained: *Pinnock v. Bailey*, 23 Ch. D. 497. Where an assignment is made of an interest in a fund, part of which is in Court, and part in the hands of the trustees, the assignee, in order to complete his title, must, as regards the fund in Court, obtain a stop order, and, as regards the fund in the hands of the trustees, give notice to them. Notice to the trustees will be ineffectual as to the fund in Court, and as to that fund the priorities of different assignees will be determined by the dates at which they have obtained stop orders: *Mutual Life Insurance Society v. Langley*, 26 Ch. D. 686; 32 Ch. D. 460. But a second incumbrancer on a fund in Court, who at the time of taking his security had notice of the existence of the first incumbrance, cannot, by obtaining a stop order, gain priority over the first incumbrancer, even although the latter never obtains a stop order: *Re Holmes*, 29 Ch. D. 786.

*Costs.*—See *Grimsby v. Webster*, 8 W. R. 725; *Hoole v. Roberts*, 12 Jur. 108; *Morgan*, p. 462, and cases there cited.

*Service.*—A petition for payment of a fund out of Court need not be served on the mortgagee of a person having a contingent interest who has died before the interest vested, even though such mortgagee has obtained a stop order: *Vernon v. Croft*, 36 W. R. 778.

13. Any person presenting a petition or taking out a summons for any such order as aforesaid shall not be required to serve such petition or summons upon the parties to the cause or matter, or upon the persons interested in such parts of the moneys or securities as are not sought to be affected by any such order.

643.

Service of  
petition or  
stop order.

This rule is taken from C. O. XXVI., r. 2.

14. Any person who, under Order XLVI. of the Rules of the Supreme Court, 1880, may have served in the manner thereby prescribed a notice, operating in lieu of a writ of *distringas*, which at the time of making this present Rule may be still in force, may at any time during the currency thereof file in the Central Office, without any affidavit in support thereof, a further notice under his hand, stating that the same shall thenceforth have effect without any further renewal, in the same manner as if it had been a notice filed in the Central Office on affidavit under Order XLVI., Rules 4 and 5 of the Rules of the Supreme Court, 1883, and serve a duplicate of such notice under seal of the Central Office upon the company upon which such first-mentioned notice was served; and the service of the duplicate of such notice so filed shall have the same effect as a writ of *distringas* duly issued under the Act 5 Vict. c. 5, s. 5, would have had against the Bank of England.

643a.

Renewal of  
notices served  
before the  
R. S. C., 1883.

This rule was introduced in July, 1885.



Order XLVII.  
rr. 1—3.

## ORDER XLVII.

## WRIT OF POSSESSION.

644.  
Writ of pos-  
session.  
[O. XLVIII.  
r. 1.]

1. A judgment or order that a party do recover possession of any land may be enforced by writ of possession in manner before the commencement of the principal Act used in actions of ejectment in the Superior Courts of Common Law.

*Writ of assistance.*—It was held that the corresponding repealed rule superseded the old Chancery writ of assistance: *Hall v. Hall*, 47 L. J., Ch. 680. It seems, however, that the writ may still be issued for the purpose of recovering possession of and preserving chattels which are in peril of being removed from the jurisdiction and lost: *Wyman v. Knight*, W. N. (1888), 166.

*Foreclosure.*—An order for foreclosure absolute is not a judgment for the recovery of land within the meaning of this rule: *Wood v. Wheeler*, 22 Ch. D. 281.

*Form of writ.*—See Appendix H, No. 8, *post*, p. 600.

645.  
Affidavit in  
support.  
[O. XLVIII.  
r. 2.]

2. Where by any judgment or order any person therein named is directed to deliver up possession of any lands to some other person, the person prosecuting such judgment or order shall, without any order for that purpose, be entitled to sue out a writ of possession on filing an affidavit showing due service of such judgment or order and that the same has not been obeyed.

In *Knight v. Clarke*, 15 Q. B. D. 294, a plaintiff who had recovered judgment in an action against his tenant for the possession of premises which had been held over after the expiration of the tenancy, was allowed to issue a writ of possession, notwithstanding that his title had expired by lapse of time before the trial.

646.  
Separate writs  
for possession  
and costs.

3. Upon any judgment or order for the recovery of any land and costs, there may be either one writ or separate writs of execution for the recovery of possession and for the costs at the election of the successful party.

The writ of possession can only issue into the county where the property recovered is situate, the *fi. fa.* for costs can issue into any county.

Ord. XLVIII.  
r. 1.

## ORDER XLVIII.

## WRIT OF DELIVERY.

647.  
When ordered  
and form of  
writ.  
[Cf. O. XLIX.  
r. 1.]

1. Where it is sought to enforce a judgment or order for the recovery of any property other than land or money by writ of delivery, the Court or a Judge may, upon the application of the plaintiff, order that execution shall issue for the delivery of the property, without giving the defendant the option of retaining the property, upon paying the value assessed, if any, and that if the property cannot be found, and unless the Court or a Judge shall otherwise order, the sheriff shall distrain the defendant by all his lands and chattels in the sheriff's bailiwick, till the defendant deliver the property; or at the option of the plaintiff, that the

sheriff cause to be made of the defendant's goods the assessed value, if any, of the property. **Ord. XLVIII. rr. 1, 2.**

*Effect of Rule.*—This rule was introduced in 1883, and substantially reproduces the provisions contained in s. 78 of the C. L. P. Act, 1854. It does not, however, effect any change of practice, inasmuch as the corresponding repealed rule preserved the practice established by the above section.

*Writ of assistance.*—Although for the purposes of recovering land the writ of assistance has been superseded by the writ of possession, the writ may still be issued for the purpose of recovering possession of and preserving chattels which are in peril of being removed from the jurisdiction and lost: *Wyman v. Knight*, W. N. (1888), 166.

*Assessing value.*—The value of the property must be assessed before execution can issue: *Corbett v. Lewin*, W. N. (1884), 62.

*Action of detainee in County Court.*—In an action of detainee brought in a County Court, the Judge has jurisdiction to make an order for the delivery by the defendant of the specific chattel wrongfully detained, without giving him the option of paying its assessed value as an alternative: *Winfield v. Boothroyd*, 34 W. R. 501.

*Practice.*—See Dan. Pr., pp. 952—954; Dan. Forms, pp. 426—428; Chitt. Arch., pp. 904—906; Chitt. Forms, p. 447. As to issue of the writ, see O. XLII., r. 6, *ante*, p. 340.

*Forms of writs.*—See App. H, Nos. 10, 11, *post*, p. 601.

*Writ of delivery on default judgment.*—See O. XIII., r. 5, *ante*, p. 164, and note thereto.

2. A writ of delivery shall be in the Form No. 10 in Appendix H; and when a writ of delivery is issued, the plaintiff shall, either by the same or a separate writ of execution, be entitled to have made of the defendant's goods the damages and costs awarded, and interest. **648.**  
Form of writ and separate writs.

This rule was introduced in 1883. The provision for obtaining, either in the same or in separate writs, damages, costs, and interest, is taken from s. 78 of the C. L. P. Act, 1854. Three forms of writs are given in the Appendix (*post*, pp. 601, 602), corresponding with the cases mentioned in the rule.

## ORDER XLIX.

### TRANSFERS AND CONSOLIDATION.

**Order XLIX.  
r. 1.**

1. Causes or matters may be transferred from one Division to another of the High Court or from one Judge to another of the Chancery Division by an order of the Lord Chancellor, provided that no transfer shall be made from or to any Division without the consent of the President of the Division. **649.**  
Transfers of causes.  
[O. LI. r. 1.]

This order reproduces the provisions of the repealed O. LI., but with some important additions.

**TRANSFER OF CAUSES.**—As to transfer generally, see S. C. Jud. Act, 1873, s. 36, *ante*, p. 35; S. C. Jud. Act, 1875, s. 11, *ante*, p. 72. As to the power of one Judge to sit for another, without the necessity for transfer, see S. C. Jud. Act, 1884, ss. 5, 6, *ante*, p. 115. As to transfer of actions in Q. B. D. from one Master to another, see O. V., r. 7, *ante*, p. 138. See, as to transfer, Dan. Pr., pp. 1892—1898; Dan. Forms, pp. 819—823; 1 Seton, pp. 319, 320; Chitt. Arch., pp. 411—415; Chitt. Forms, pp. 238—241.

*Transfers in Chancery Division.*—Transfers from one Judge of the Chancery Division to another will be made, when all parties consent, upon a written application to the Lord Chancellor's secretary, accompanied by the written consent of the parties. Where all parties do not consent, the application must be made to the Lord Chancellor in Court: Mem., 1 Ch. D. 41. The power can



**Order XLIX.**  
**rr. 1—3.**

only be exercised by the Lord Chancellor; the C. A. has no power to order a transfer: *Re Hutley*, 1 Ch. D. 11; *Re Boyd's Trusts*, *ibid.* 12.

*Consent of President.*—An order for transfer from one Division to another is not effectual until the necessary consent of the President of the Division to which it is proposed to transfer has been obtained: *Humphreys v. Edwards*, 45 L. J., Ch. 112.

650.  
 Transfer of  
 Chancery  
 action for trial  
 only.  
 [O. LI. r. 1a.]

**2.** In the Chancery Division a transfer of a cause or matter from one Judge to another may by the same or a separate order be ordered to be made or to be deemed to have been made for the purpose only of hearing or of trial, and in such case the original and any further hearing shall take place before the Judge to whom the cause or matter shall be so transferred; but all other proceedings therein, whether before or after the hearing or trial of the cause or matter, shall be taken and prosecuted in the same manner as if such cause or matter had not been transferred from the Judge to whom it was assigned at the time of transfer, and as if such Judge had given or made the judgment or order, if any, therein, unless the Judge to whom the cause or matter is transferred shall direct that any further proceedings therein, before or after the hearing or trial thereof, shall be taken and prosecuted before himself or before an Official Referee or special referee.

This rule is with a few verbal alterations the same as the repealed O. LI., r. 1a.

As to the power of one Judge to sit for another of the same Division without any transfer, see S. C. Jud. Act, 1884, s. 6, *ante*, p. 115.

*Cases under the Rule.*—"Applications in respect of the construction of the order made at the trial of an action (*Shaw v. Brown*, W. N. (1881), 27), and applications for charging orders under the Attorneys and Solicitors Act, 1860, by reason of the judgment obtained at the trial (*Porter v. West*, 29 W. R. 236), and applications to strike off the rolls a solicitor who has been found by the Judge at the trial to have been guilty of misconduct (*Cave v. Cave*, 28 W. R. 764), should be made to the Judge to whom the action was, under the above rule, transferred for the purpose only of trial or of hearing; and after such a transfer has been directed, interlocutory applications in the action should be made to the Judge to whom the action was assigned, and the Judge to whom the action was originally assigned has not jurisdiction to order that an interlocutory application therein shall be heard by the Judge to whom it has been transferred (*Lloyd v. Jones*, 7 Ch. D. 390)": Dan. Pr., p. 1895. An application to stay proceedings may properly be made to the Judge to whom an action was originally assigned, and not to the Judge to whom it has been transferred for trial: *Robinson v. Chadwick*, 26 W. R. 421.

*Further consideration.*—Where a Chancery action is transferred to a Judge for trial only, and on the hearing inquiries are directed, and further consideration reserved, the further consideration usually takes place before the Judge to whom the action was originally assigned.

*Assignment of causes.*—As to the assignment of causes and matters to the Judges of the Chancery Division, see O. V., r. 9, *ante*, p. 138. As to the assignment of originating summonses, see O. LV., r. 11, *post*, p. 408.

651.  
 Transfer by  
 order on  
 consent of  
 President.  
 [O. LI. r. 2.]

**3.** Any cause or matter may, at any stage, be transferred from one Division to another by an order made by the Court or any Judge of the Division to which the cause or matter is assigned: Provided that no such transfer shall be made without the consent of the President of the Division to which the cause or matter is proposed to be transferred.

*Effect of Rule.*—This rule reproduces, with verbal alterations only, the repealed O. LI., r. 2. It only applies to transfers from Division to Division, not from Judge to Judge: *Chapman v. Real Property Trust*, 7 Ch. D. 732.



*Application: how made.*—By motion, or summons, on notice: Dan. Pr., p. 1894; Dan. Forms, p. 822; Chitt. Arch., p. 412; Chitt. Forms, p. 239. **Order XLIX. rr. 3—4a.**

*Consent of President.*—The order for transfer can be made without the consent of the President, though the actual transfer cannot: *Humphreys v. Edwards*, 45 L. J., Ch. 112. It is doubtful whether the Court of Appeal can order the transfer of an action from one Division to another without the consent of the President of each Division: *Storey v. Waddle*, 4 Q. B. D. 289.

*Cases.*—Where a defendant, by way of counter-claim, seeks relief to which the Chancery Division alone has the requisite machinery to give due effect (such as specific performance), this may be a good reason for transferring the action to that Division: *Holloway v. York*, 2 Ex. D. 333; *Hillman v. Mayhew*, 1 Ex. D. 132; *Holmes v. Hervey*, 25 W. R. 80; *London Land Co. v. Harris*, 13 Q. B. D. 540. In an action for trespass, where there was a counter-claim for specific performance of an agreement and rectification of a deed, transfer to the Chancery Division was refused: *Storey v. Waddle*, 4 Q. B. D. 289; see, too, *Standard Discount Co. v. Barton*, 37 L. T. 581, where the defendant instituted a cross-action in the Chancery Division. In *Canot v. Morgan*, 1 Ch. D. 1, the Court refused to transfer an action for damages for misrepresentation from the Chancery to the Queen's Bench Division. Where the personal representative of a deceased mortgagee commenced an action in the Queen's Bench Division for payment of the balance of moneys lent, and afterwards defendant commenced a redemption action in the Chancery Division, an application to transfer the first action to the Chancery Division was refused, as the accounts could be more conveniently taken before an Official Referee than before the Chief Clerk: *Newbould v. Steade*, 49 L. T. 649. But an action for partnership accounts was ordered to be transferred to the Chancery Division, as the Queen's Bench Division had not suitable machinery for the taking of such accounts: *Leslie v. Clifford*, 50 L. T. 590. In *Ladd v. Puleston*, 31 W. R. 539, an application to transfer was refused, one side refusing to consent.

Where in an action brought in the Chancery Division there are questions of fact to be tried before a Judge of another Division and a jury, it is the better and more convenient course to transfer the action to the other Division, although it is of a class properly assignable to the Chancery Division: *Clements v. Norris*, W. N. (1878), 4; *China Steamship Co. v. Marine Insurance Co.*, W. N. (1881), 89; and see *Re Martin*, *Hunt v. Chambers*, 20 Ch. D. 365.

*Transfer to Admiralty Division.*—An action for personal injury resulting from a collision between ships, was transferred to the Admiralty Division, where a limitation action relating to the collision was pending: *Hawkins v. Morgan*, 49 L. J., Q. B. 618. In a case, which appeared to be an ordinary suit for salvage, Jessel, M. R., transferred the action to the Admiralty Division: *Humphreys v. Edwards*, 45 L. J., Ch. 112. Although an action in which the sole question is one of salvage may be properly transferred to the Admiralty Division, such a transfer should not be ordered where there are other questions in the action capable of being tried by a jury: *Ocean Steamship Co. v. Anderson*, 33 W. R. 536.

*Discretion.*—An order of transfer is a discretionary order: *The Fulica*, W. N. (1880), 172.

*Costs.*—If a consent to the transfer is refused, or the transfer is opposed on insufficient grounds, the parties refusing to consent or opposing will be ordered to pay the costs of the application: *Cocq v. Huwasgeria Coffee Co.*, 4 Ch. 415; *Orrell v. Busch*, 5 Ch. 467; *Lucas v. Siggers*, 7 Ch. 517. Costs of correspondence prior to a motion to transfer were disallowed: *Norton v. Fenwick*, 54 L. J., Ch. 632.

4. A particular application in any cause or matter may, by the direction of the Lord Chancellor be heard and disposed of by any Judge of the High Court who shall consent so to do, to whatever Division or Judge such cause or matter may have been assigned. 652.  
Applications to be disposed of by any Judge.

4A. Any Judge of the Chancery Division may, at the request or with the consent of any other Judge of that Division before whom Chancery Judges may hear applica-

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**rr. 4a—8.**

tions for each  
other.

a cause or matter is pending, hear such cause or matter or any application therein, and for that purpose it shall not be necessary that any order for transfer shall be made or consent of the parties obtained.

This rule is one of the Rules of Dec., 1885: see S. C. Jud. Act, 1884, s. 6, *ante*, p. 115.

653.

Transfer after  
winding up or  
administration  
order.

[Cf. O. LI.  
r. 2a.]

5. When an order has been made by any Judge of the Chancery Division for the winding up of any company, or for the administration of the assets of any testator or intestate, the Judge in whose Court such winding up or administration shall be pending shall have power, without any further consent, to order the transfer to such Judge of any cause or matter pending in any other Court or Division brought or continued by or against such company, or by or against the executors or administrators of the testator or intestate whose assets are being so administered, as the case may be.

*Effect of Rule.*—This rule reproduces, with necessary verbal alterations, the repealed O. LI., r. 2a. It only applies to cases where a winding up or administration order has actually been made. It is now well settled that before that time application must be made to the Division in which the action is pending: *Re Artistic Colour Co.*, 14 Ch. D. 502; see, too, the cases cited in the note to S. C. Jud. Act, 1873, s. 24, sub-s. 5, *ante*, p. 18. The order to transfer should not be made by the order for administration: *Re Poole*, 55 L. T. 56.

*Cases.*—This rule does not apply to an action against an executor where he is personally liable: *Chapman v. Mason*, 40 L. T. 678; or to an action against a liquidator personally: *Re Thames Steam Ferry Co.*, 40 L. T. 422.

For instances of transfers effected under this rule, see *Re Stubbs*, 8 Ch. D. 154, where an action was transferred from the Exchequer Division after a conditional order for judgment had been made: see, too, *Re Timms*, 26 W. R. 692; *Re Sharpe*, W. N. (1884), 28. Where an order was made for summary judgment under O. XIV., after judgment for administration, an order was made by the Chancery Division discharging the judgment and for transfer of the action: *Evans v. Briggs*, W. N. (1887), 240.

*Application: how made.*—Application may be made under the rule *ex parte*: *Field v. Field*, W. N. (1877), 98; *Re Landore Co.*, 10 Ch. D. 489; *Masbach v. Anderson*, 26 W. R. 100.

654.

Transfers of  
originating  
summonses.

6. When any summons under Order LV., Rules 3 and 4, shall have been marked with the name of a Judge other than the Judge by Rule 11 of the same Order prescribed, such last-mentioned Judge shall, unless cause shall appear to him to the contrary, without any further consent, order the transfer to such Judge of the summonses so improperly marked.

This rule was introduced in 1883: see O. LV., rr. 3—11 inclusive, *post*, pp. 404—408.

655.

Assignment  
to Judge of  
transferred  
cause.

[Cf. O. LI.  
r. 3.]

7. Any cause or matter transferred from any other Division to the Chancery Division shall, by the order directing the transfer, be assigned to one of the Judges of that Division to be named in the order.

See as to the ordinary method of assignment to a Judge in the Chancery Division, O. V., r. 9, *ante*, p. 138.

656.

Consolidation  
of causes.

[Cf. O. LI.  
r. 4.]

8. Causes or matters pending in the same Division may be consolidated by order of the Court or a Judge in the manner in use before the commencement of the principal Act in the Superior Courts of Common Law.

This rule is, with verbal alterations, the same as the repealed O. LI., r. 4.



**CONSOLIDATION.**—The term “consolidation of actions” is used in two senses. First, if a plaintiff brings two actions against the same defendant, for matters which might properly be combined in one action, and the double proceeding is shown to be vexatious, the Court, in the exercise of its ordinary power to prevent any abuse of its own process, will consolidate the actions; that is to say, will stay proceedings absolutely in one action, and require the plaintiff to include the whole of his claims in the other; and this has been done with costs against the plaintiff: see, at law, *Cecil v. Briggs*, 2 T. R. 639; *Anon.*, 1 Chitt. Rep. 709 (n.); *Beardsall v. Cheetham*, E. B. & E. 243; 1 Tidd’s Practice, p. 614, ed. 9; Chitt. Arch., pp. 407—410.

But the term consolidation is more frequently used in a different sense. Where actions are brought by the same plaintiff against different defendants, but the questions in dispute in all are substantially the same, the Court will, on the application of the defendants, stay proceedings in all the actions except one until that one action has been determined, upon the terms that the various defendants agree to be bound by the event of the action which proceeds. This practice was first introduced in the King’s Bench under Lord Mansfield, in the case of actions against the several underwriters upon policies of insurance: see 1 Tidd’s Practice, p. 614, ed. 9. But it has since been applied in many other cases; as, in the case of separate guarantees by different instruments of separate parts of a debt: *Sharp v. Lethbridge*, 4 M. & G. 37; joint and several obligors of a bond conditioned for the good behaviour of another person: *Anderson v. Towgood*, 1 Q. B. 245; principal and sureties on a replevin bond: *Bartlett v. Bartlett*, 4 Scott, N. R. 779; the several members liable upon a mutual insurance policy: *Lewis v. Barks*, 4 C. B., N. S. 330. So, where a number of actions against different defendants may be reduced to classes, those of each class raising the same questions, the Court may allow one action of each class to proceed, and stay the rest: *Syers v. Pickersgill*, 27 L. J., Ex. 5.

**Application: how made.**—The order is made on the application of the defendant by motion or summons, entitled in all the actions, and without the necessity of any consent on the plaintiff’s part: *Hollingsworth v. Brodrick*, 4 A. & E. 646. It binds the defendants in the actions which are stayed to abide the event of the one which proceeds; but it does not bind the plaintiff to do so; and if the result of the first action is against him, he may proceed with another: *Doyle v. Anderson*, 1 A. & E. 635; *Doyle v. Douglass*, 4 B. & Ad. 544. A consolidation order may be obtained at any time after service of the writ: *Hollingsworth v. Brodrick*, *ubi supra*.

**Re-opening consolidation order.**—The Court may re-open the consolidation order, and allow a second action to be defended, notwithstanding that the plaintiff has succeeded in the first action. But it will require a very strong case to induce it to do so. Probably a case must be shown at least as strong as would be required to procure a new trial: see *Foster v. Alvez*, 3 Bing. N. C. 896.

**Discretion.**—The order is discretionary, and in Admiralty cases the practice is not to force consolidation on unwilling parties: *The Jacob Landsturm*, 4 P. D. 191.

**Actions assigned to different Judges.**—In *Smith v. Whicheord*, 24 W. R. 900, separate actions between different parties relating to the same subject-matter were consolidated upon terms, a transfer to one Judge having been first made. See also *Holmes v. Hervey*, 25 W. R. 80.

**Cross-actions.**—As to the consolidation of cross-actions, see *Thomson v. S. E. Ry.*, 9 Q. B. D. 320. See also *The Never Despair*, 9 P. D. 34.

**Effect of consolidation.**—Where actions have been ordered to be consolidated, the plaintiffs are in the same position as if they had been originally co-plaintiffs: *Holden v. Silkstone Co.*, 30 W. R. 98.

**Conduct of consolidated actions.**—See *Holden v. Silkstone Co.*, *ubi sup.*; *The Never Despair*, 9 P. D. 34; *The Bjorn*, *ibid.*, 36, n.; *The Cosmopolitan*, *ibid.*, 35, n.

**Consolidation of administration actions.**—“Where several actions are brought for the administration of the estate of the same deceased person, if no judgment for administration has been made, an application may be made to consolidate the actions (*Re Wortley*, 4 Ch. D. 180); but if a judgment for general adminis-



Order XLIX.  
r. 8.

tration has been given in one of the actions, the application should be to stay proceedings in the other actions, such other actions having been first transferred to the Judge by whom the administration judgment has been pronounced." Dan. Pr., p. 1891. As to conduct, see *Re Swire*, 21 Ch. D. 647; *Townsend v. Townsend*, 23 Ch. D. 100; *Re Macrae*, 25 Ch. D. 16.

*Test actions.*—Although consolidation, properly so called, can only be obtained at the instance of defendants, where several defendants are sued by the same plaintiffs, a somewhat analogous proceeding has been adopted in the converse case, where several plaintiffs had brought their several actions against the same defendant to recover similar relief in reference to the same transactions. *Malins, V.-C.*, at the instance of the plaintiffs, enlarged the time for taking any further steps in all the actions but one, until that one should be tried: *Amos v. Chadwick*, 4 Ch. D. 869; and a similar course was followed in *Bennett v. Lord Bury*, 5 C. P. D. 339. Where the test action for any reason is not fought out, another of the set of actions will, if necessary, be substituted for it: *Amos v. Chadwick*, 9 Ch. D. 459. In the absence of agreement the plaintiff in the test action has no right to indemnity against costs from the other plaintiffs: *Ibid.* Where seventeen separate actions for libel were brought by the same plaintiff against several defendants, an order was made to stay proceedings in all the actions but one, to be selected by the plaintiff. If plaintiff should be dissatisfied with the verdict obtained at the trial, he was to be at liberty to select one other action for trial, the defendants undertaking to be bound by the verdicts in the first and second selected actions, and plaintiff to be at liberty to sign judgment against the defendants in all the other actions for the maximum amount of damages awarded by the jury: *Colledge v. Pike*, 56 L. T. 124.

*Consolidation generally.*—See Dan. Pr., pp. 1888—1892; Dan. Forms, pp. 816—819; 1 Seton, pp. 322—326; Chitt. Arch., pp. 407—410; Chitt. Forms, pp. 228—231.

Order I.  
r. 1.

## ORDER L.

## I.—INTERLOCUTORY ORDERS AS TO MANDAMUS, INJUNCTIONS OR INTERIM PRESERVATION OF PROPERTY, &amp;c.

657.  
Order for  
custody or  
preservation  
of property.  
[O. LII. r. 1.]

1. When by any contract a *prima facie* case of liability is established, and there is alleged as matter of defence a right to be relieved wholly or partially from such liability, the Court or a Judge may make an order for the preservation or interim custody of the subject-matter of the litigation, or may order that the amount in dispute be brought into Court or otherwise secured.

*Effect of order.*—The parts of this Order which relate to the preservation, custody, and inspection of property pending litigation reproduce, with some important additions, the provisions of the repealed O. LII., rr. 1—6. By this Order and the sections cited below very important powers are given to the Court for preserving the rights of the parties uninjured during the pendency of litigation.

- i. By r. 1, when a *prima facie* case of liability, under a contract, is established, and the party *prima facie* liable seeks to be relieved from his liability, an order may be made for payment into Court of, or otherwise securing, the amount of the claim, or for the preservation of the subject-matter. The meaning of the word "established" seems to be (r. 7, *infra*), admitted on the pleadings if there are pleadings, or shown to the satisfaction of the Court or Judge if there are no pleadings. As to enforcing such orders as those referred to, see O. XLII., rr. 4, 7, and 24, *ante*, pp. 340, 346.
- ii. By r. 2, an order may be made for the sale of goods which are perishable, or which for other reasons it is desirable to have sold at once.

Order L.  
rr. 1—3.

- iii. By r. 3, in any case (not, as under r. 1, in the case of liability under a contract only), an order may be made for the preservation of the subject-matter of the action, or for inspection of property, or the taking of samples, or making observations or experiments.
- iv. By rr. 4 and 5, provision is made for the inspection by either the Judge who tries the case, or by the Judges of Appeal, or, in jury cases, by the jury, of any property which is the subject-matter of the litigation.
- v. By r. 6, provision is made for applications for a mandamus or injunction, or for the appointment of a receiver in cases in which it is just or convenient: S. C. Jud. Act, 1873, s. 25, sub-s. 8, *ante*, p. 23.
- vi. By r. 8, where property other than lands is claimed, and the defence to the claim is founded upon an alleged lien, an order may be made for delivering up the property to the claimant on payment into Court of the amount of the alleged lien, with a sum for interest and costs, if the Court or Judge think fit.

*Attachment in aid.*—An order made under this rule may be enforced by attachment under O. XLIV., r. 2, *ante*, p. 352: *Hutchinson v. Hartmont*, W. N. (1877), 29. But an order for payment into Court of money can be so enforced only if the case falls within the exceptions in the Debtors Act, 1869: *Phosphate Sewage Co. v. Hartmont*, 25 W. R. 743; *Ex parte Hooson*, 8 Ch. 231.

1A. Whenever an application shall be made before trial for an injunction or other order, and on the opening of such application, or at any time during the hearing thereof, it shall appear to the Judge that the matter in controversy in the cause or matter is one which can be most conveniently dealt with by an early trial, without first going into the whole merits on affidavit or other evidence for the purposes of the application, it shall be lawful for the Judge to make an order for such trial accordingly, and to direct such trial to be held at the next or any other assizes for any place, if from local or other circumstances it shall appear to him to be convenient so to do, and in the meantime to make such order as the justice of the case may require.

Order for trial on application for an injunction.

This rule was introduced in October, 1884.

On an application for an interim injunction under this rule the Court refused to grant the injunction, but ordered the adjournment of the motion for a week, with liberty to have the action tried by a jury: *Keenan v. Clark*, 29 Sol. J. 67.

2. It shall be lawful for the Court or a Judge, on the application of any party, to make any order for the sale, by any person or persons named in such order, and in such manner, and on such terms as the Court or Judge may think desirable, of any goods, wares, or merchandise which may be of a perishable nature or likely to injure from keeping, or which for any other just and sufficient reason it may be desirable to have sold at once.

658.  
Sale of perishable goods.  
[O. LII. r. 2.]

Compare s. 13 of the C. L. P. Act, 1860. Under this rule the sale of a horse has been ordered: *Bartholomew v. Freeman*, 3 C. P. D. 316. A foreign ship was ordered to be sold on the report of the marshal that the sale was desirable: *The Hercules*, 11 P. D. 10.

3. It shall be lawful for the Court or a Judge, upon the application of any party to a cause or matter, and upon such terms as may be just, to make any order for the detention, preservation, or inspection of any property or thing, being the subject of such cause or matter, or as to which any question may arise therein, and for all or any of the purposes aforesaid to authorise any persons to enter upon or into any land or building in the possession of any party to such cause or matter, and for all or any of the purposes aforesaid to authorise any samples to be taken, or any observation

659.  
Detention of property.  
[O. LII. r. 3.]

Inspection.  
Entry on land.  
Samples.



Order L.  
rr. 3—6.

## Experiment.

to be made or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence.

*Cases under the Rule: Preservation of property.*—In a Probate suit the Court made an order restraining any person from dealing with shares of a ship forming part of the deceased's estate: *Nicholas v. Dracachis*, 1 P. D. 72. In *Hyde v. Warden*, 1 Ex. D. 309, the Court of Appeal confirmed an order making the plaintiff receiver and manager of a farm, without security. See also *Taylor v. Eekersley*, 2 Ch. D. 302. In an action to recover jewellery, the defendant alleged that it belonged to a third party, and had been deposited by him to secure a debt due to the defendant. The Court ordered it to be given up to an officer of the Court: *Velati v. Braham*, 46 L. J., C. P. 415. Under the powers given by this rule Fry, J., granted an interim mandatory injunction to compel the defendant, in an action for specific performance of an agreement to take a lease, to continue pumping water out of a mine: *Strelley v. Pearson*, 15 Ch. D. 113. See, by way of analogy, *Polini v. Gray*, 12 Ch. D. 438, as to continuing an injunction to preserve a fund pending an appeal to the House of Lords.

*Inspection.*—In *Lumb v. Beaumont*, 27 Ch. D. 356, an order was made under this rule giving the plaintiff liberty, before the hearing, to enter on the defendant's land and dig up soil for the purpose of discovering the course of a drain, the subject of the action. For cases as to inspection of mines, see *Mitchell v. Darley Main Colliery Co.*, 10 Q. B. D. 457; *Cooper v. Ince Hall Co.*, W. N. (1876), 24. For order to inspect process in action for infringement of patent, see *Germ Milling Co. v. Robinson*, 55 L. J., Ch. 287.

*Experiments.*—See *Badische Anilin und Soda Fabrik v. Levinstein*, 24 Ch. D. 156.

*Application: how made.*—In the Chancery Division, by motion or summons on notice: Dan. Pr., p. 1802; *Habershon v. Gill*, W. N. (1875), 231; in the Q. B. D., always by summons.

"Any party."—An order for inspection of property may be granted as between co-plaintiffs (?), or persons who are both defendants to an action, so long as there is some right to adjust between them in respect of which such an order would be useful: *Shaw v. Smith*, 18 Q. B. D. 193.

660.  
Inspection by  
Judge.

4. It shall be lawful for any Judge, by whom any cause or matter may be heard or tried with or without a jury, or before whom any cause or matter may be brought by way of appeal, to inspect any property or thing concerning which any question may arise therein.

This rule was introduced in 1883.

661.  
Inspection by  
Jury.

5. The provisions of Rule 3 of this Order shall apply to inspection by a jury, and in such case the Court or a Judge may make all such orders upon the sheriff or other person as may be necessary to procure the attendance of a special or common jury at such time and place, and in such manner as they or he may think fit.

This rule is founded on ss. 58 and 59 of the C. L. P. Act, 1854.

A view may be obtained under this rule on an *ex parte* application with the consent of the other side: *Pickard v. G. N. R. Co.*, W. N. (1883), 194.

662.  
Application  
for mandamus,  
injunction, or  
receiver under  
rr. 2 and 3.  
[O. LII. r. 4.]

6. An application for an order under section 25, sub-section 8, of the Principal Act, or under Rules 2 or 3 of this Order, may be made to the Court or a Judge by any party. If the application be by the plaintiff for an order under the said sub-section 8 it may be made either *ex parte* or with notice, and if for an order under Rules 2 or 3 of this Order it may be made after notice to the defendant at any time after the issue of the writ of summons, and if it be by any



other party, then on notice to the plaintiff, and at any time after appearance by the party making the application.

Order L.  
r. 6.

PROVISIONS OF S. C. JUD. ACT, 1873, s. 25:—

[Sub-s. 8. A mandamus or an injunction may be granted or a receiver appointed by an interlocutory order of the Court in all cases in which it shall appear to the Court to be just or convenient that such order should be made; and any such order may be made either unconditionally or upon such terms and conditions as the Court shall think just; and if an injunction is asked, either before, or at, or after the hearing of any cause or matter, to prevent any threatened or apprehended waste or trespass, such injunction may be granted, if the Court shall think fit, whether the person against whom such injunction is sought is or is not in possession under any claim of title or otherwise, or (if out of possession) does or does not claim a right to do the act sought to be restrained under any colour of title; and whether the estates claimed by both or by either of the parties are legal or equitable.]

As to the effect of this sub-section, and the cases in which a mandamus or injunction is granted, or a receiver appointed, see notes thereto, *ante*, pp. 23—27.

**A. MANDAMUS.**—See O. LIII., *post*, p. 393; Dan. Pr., pp. 1638—1642; Chitt. Arch., pp. 431, 432.

**B. INJUNCTION:—**

*Injunction generally.*—See Dan. Pr., pp. 1574—1627; Dan. Forms, pp. 692—697; 1 Seton, pp. 171—299.

*Claim for injunction.*—If the injunction is a substantial object of the action it should be claimed on the writ of summons: *Colebourne v. Colebourne*, 1 Ch. D. 690.

*Interlocutory injunction.*—“An interlocutory injunction is merely a mode by which the Court preserves the property in dispute, with the least injury to all parties, until it can finally determine their respective rights (*Plimpton v. Spiller*, 4 Ch. D. 286). And it will not be granted, in a doubtful case, to restrain the commission of an act for which, if wrongful, ample compensation can be obtained in damages, while, by granting an injunction, serious injury would be inflicted on the party sought to be restrained (*Elwes v. Payne*, 12 Ch. D. 468):” Dan. Pr., p. 1607. To warrant the Court in granting an interlocutory injunction, those who complain must at least show that they have sustained or will sustain “irreparable damage,” that is, damage for which they cannot obtain adequate compensation without the special interference of the Court: *The Mogul Steamship Co. v. M'Gregor*, 15 Q. B. D. 476. In order to obtain an interlocutory injunction, the plaintiff must make out a *prima facie* case, *i. e.*, a case such that, if the evidence remains the same at the hearing, it is probable that he will obtain an order; and unless he makes out such a case, an injunction will not be granted on the mere consideration of the balance of convenience and inconvenience: *Challender v. Royle*, 36 Ch. D. 425, at pp. 436, 443.

*Application ex parte.*—In an urgent case an injunction will be granted without notice, or even before service, or, in an extreme case, before issue of the writ of summons: Dan. Pr., p. 1608. But the order will not in general be made *ex parte* except in a case of emergency: *Anon.*, W. N. (1876), 12.

*Interim order.*—Usually, on *ex parte* applications, an interim order is granted restraining defendant until after a particular day, and leave is given to serve notice of motion for the day before such day. As to an interim injunction granted “over next motion day or until further order,” see *Bolton v. London School Board*, 7 Ch. D. 766. In *Norris v. Ormond*, W. N. (1883), 58, Bacon, V.-C., granted, *ex parte*, an injunction to restrain a marriage with a ward of Court generally until further order, and not for a limited time.

*Notice of motion.*—If it is intended to serve notice of motion before the expiration of the time limited for the appearance of the defendant, or to make the application on short notice, the special leave of the Court must be first obtained, and the fact that it has been given must be stated in the notice of motion: Dan. Pr., p. 1612.

*No injunction ex parte after notice of motion.*—Where notice of motion has been given an application for an interlocutory injunction should not be made *ex parte*, even when from pressure of business the motion cannot be brought on: *Graham v. Campbell*, 7 Ch. D. 490.

**Order L.  
r. 6.**

*Evidence.*—See Dan. Pr., pp. 1612—1614. The affidavits should be sworn after the writ is issued. But where the affidavit had been sworn before the issue of the writ, an interim order was made, upon the undertaking of plaintiff to have the affidavit resworn and filed: *Green v. Prior*, W. N. (1886), 50.

*Undertaking as to damages.*—Where an interlocutory injunction is granted there should always be an undertaking as to damages: *Graham v. Campbell*, 7 Ch. D. 490; and as regards such undertaking no exception will be made even in favour of the Crown: *Secretary for War v. Chubb*, W. N. (1880), 128. As to enforcing the undertaking, see *Smith v. Day*, 21 Ch. D. 421; *Ex parte Hall*, 23 Ch. D. 644; *Griffith v. Blake*, 27 Ch. D. 474; *Hunt v. Hunt*, 54 L. J., Ch. 289.

*Motion treated as trial of action.*—By consent a motion for an injunction is frequently treated as the trial of the action: see, for instance, *Aslatt v. Corporation of Southampton*, 16 Ch. D. 143, at p. 150.

*Service of notice of injunction.*—See Dan. Pr., p. 1616. Notice may be given by telegram: *Ex parte Langley*, 13 Ch. D. 110.

*Dissolving injunction.*—See Dan. Pr., pp. 1617—1619.

*Breach of injunction.*—The remedy, in the event of the breach of an injunction, is by committal, and not by attachment. See, as to consequences of the breach of an injunction, Dan. Pr., pp. 1622—1627.

*Injunction or damages.*—Although Lord Cairns' Act (21 & 22 Vict. c. 27) is repealed by 46 & 47 Vict. c. 49, s. 3, the jurisdiction conferred thereby of awarding damages in lieu of an injunction is still in force: *Sayers v. Collyer*, 28 Ch. D. 103, per Baggallay, L. J. As to the principles on which the Courts act in deciding whether or not to award damages in lieu of an injunction, see *Holland v. Worley*, 26 Ch. D. 578; *Greenwood v. Hornsey*, 33 Ch. D. 471.

**C. RECEIVERS:—**

*Receivers generally.*—See Dan. Pr., pp. 1664—1720; Dan. Forms, pp. 717—739; 1 Seton, pp. 410—454; Kerr on Receivers; S. C. Jud. Act, 1873, s. 25 (8), and notes thereto, ante, pp. 23, 26.

*Claim for receiver.*—If the application for a receiver is made before the trial, a claim for a receiver should be endorsed on the writ of summons: *Colebourne v. Colebourne*, 1 Ch. D. 690; but the Court has power to appoint a receiver although the claim is not endorsed: *Norton v. Gover*, W. N. (1877), 206.

*Application by defendant.*—The application may be made by a defendant, although the plaintiff has already given notice of motion; but the conduct of proceedings will generally be given to the plaintiff: *Sargant v. Read*, 1 Ch. D. 600.

*Application: how made.*—In the Chancery Division an application for appointment of a receiver is usually made by motion. An application may be made in Chambers: *Blackborough v. Ravenhill*, 16 Jur. 1085; *Booth v. Coulton*, 16 W. R. 683. But, as a rule, no such order will be made at Chambers, except in cases where a consent is given: 1 Seton, p. 425. The practice is, however, not uniform in this respect: see Dan. Forms, p. 718, n. (d). A vacancy occurring in the office by death or otherwise may be filled up by an order made at Chambers: *Grote v. Bing*, 9 Hare, App. 50. In the Queen's Bench Division the application is made by summons: see Chitt. Forms, p. 251.

*Application: when made.*—In a case of urgency a receiver may be appointed *ex parte* before appearance of the defendant: *Taylor v. Eckersley*, 2 Ch. D. 302. But, except in a case of emergency, the application should not be made *ex parte*: *Lucas v. Harris*, 18 Q. B. D. 127, at p. 134.

*Leave to serve notice of motion.*—If the application is made before the expiration of the time limited for appearance, and is not made *ex parte*, leave must be obtained to serve the notice of motion, and the fact of such leave having been obtained must be mentioned in the notice of motion. Where leave is given to serve short notice of motion, the fact that such leave has been given must be stated in the notice: *Dawson v. Beeson*, 22 Ch. D. 504.

*Who may be appointed.*—See Dan. Pr., pp. 1681—1683; Kerr, pp. 94—100. A party to the action may, under special circumstances, be appointed; but, except by consent, he will not be appointed, unless he is willing to act without salary: 1 Seton, p. 426; see *Taylor v. Eckersley*, 2 Ch. D. 302; *Fuggle v. Bland*, 11 Q. B. D. 711. The next friend of an infant cannot be appointed receiver of the infant's estate: *Stone v. Wishart*, 2 Mad. 64; nor a solicitor in the cause: *Garland v. Garland*, 2 Ves. J. 137; *Re Lloyd*, 12 Ch. D. 447.



Order L.  
rr. 6—8.

*Security.*—See r. 16, *infra*, and notes thereto.

*Effect of appointment.*—See Dan. Pr., pp. 1691—1696; Kerr, pp. 118—137.

*Salary and allowances of receiver.*—See Dan. Pr., pp. 1696—1698; Kerr, pp. 164—172.

*Powers, duties, and liabilities of receiver.*—See Dan. Pr., pp. 1698—1703; Kerr, pp. 138—163.

*Receiver's accounts.*—See rr. 18—22A, *infra*, and notes thereto.

*Interference with receiver.*—Interference with a receiver appointed by the Court is a contempt of Court, and will be punished by committal: Kerr, pp. 124, 134—136. Slander of title of the business carried on by a receiver and manager appointed by the Court is properly punishable by committal of the offender when he refuses to give an undertaking not to repeat the offence: *Helmore v. Smith*, 35 Ch. D. 449.

*Receiver, by way of equitable execution.*—See O. XLII., r. 28, *ante*, p. 347; r. 15A, *infra*, and notes thereto; Dan. Pr., pp. 931—933; Morgan, pp. 177, 178; Chitt. Arch., p. 433. A receiver will be granted, by way of equitable execution, only where the amount of the judgment debt warrants the expense, and where there is fair reason to suppose there is something for the receiver to receive: *I. v. K.*, W. N. (1884), 63.

*Judgment creditor: charge on assets.*—Where, in a partnership action, a receiver had been appointed, upon an application by creditors of the firm, who had recovered judgment for a sum exceeding 50*l.*, for leave to issue execution against the partnership assets, an order was made giving them a charge on the assets in the hands of the receiver, they undertaking to deal with them according to any order the Court might make: *Keeney v. Attrill*, 34 Ch. D. 345.

7. An application for an order under Rule 1 of this Order may be made by the plaintiff at any time after his right thereto appears from the pleadings; or, if there be no pleadings, is made to appear by affidavit or otherwise to the satisfaction of the Court or a Judge.

663.  
Application  
under r. 1.  
[O. LII. r. 5.]

See as to admissions, O. XXXII., rr. 1 and 4, *ante*, pp. 268, 269.

8. Where an action is brought to recover, or a defendant in his defence seeks by way of counter-claim to recover specific property other than land, and the party from whom such recovery is sought does not dispute the title of the party seeking to recover the same, but claims to retain the property by virtue of a lien or otherwise as security for any sum of money, the Court or a Judge may, at any time after such last-mentioned claim appears from the pleadings, or, if there be no pleadings, by affidavit or otherwise to the satisfaction of such Court or Judge, order that the party claiming to recover the property be at liberty to pay into Court, to abide the event of the action, the amount of money in respect of which the lien or security is claimed, and such further sum (if any) for interest and costs as such Court or Judge may direct, and that, upon such payment into Court being made, the property claimed be given up to the party claiming it.

664.  
Where lien  
claimed, order  
for possession  
on payment  
into Court of  
sum claimed.  
[O. LII. r. 6.]

*Deeds in hands of mortgagee.*—In an action by mortgagee against mortgagor, where the defendant paid into Court the full amount claimed, and the plaintiff took it out in satisfaction of his claim, an application by the defendant, under this rule, that, on payment of the plaintiff's costs, the plaintiff should be ordered to give up to the defendant the deeds relating to the mortgage was refused: *Morgan v. Greatrex*, W. N. (1884), 2.

*Solicitor's lien.*—Whether the jurisdiction of the Court to order delivery up by a solicitor of his client's papers, before taxation, upon the amount of the demand being secured, is not extended by this rule, *quære*: *Re Galland*, 31 Ch. D. 296, at p. 305, per Lindley, L. J.



**Order L.  
rr. 9—12.**

665.

Allowance of  
income out of  
estate.

9. Where any real or personal estate forms the subject of any proceedings in the Chancery Division, and the Judge is satisfied that the same will be more than sufficient to answer all the claims thereon which ought to be provided for in such proceedings, the Judge may at any time after the commencement of the proceedings, allow to the parties interested therein, or any one or more of them, the whole or part of the annual income of the real estate or a part of the personal estate, or the whole or part of the income thereof, up to such time as the Judge shall direct.

This rule is taken from 15 & 16 Vict. c. 86, s. 57.

*Application.*—The application is made by summons: *Bentley v. Craven*, 1 W. R. 362; Dan. Pr., p. 988; Dan. Forms, p. 455.

*Order: when made.*—"The application will not, in general, be granted unless there is some pressing reason for making the allowance, and the Court can see that the parties are clearly entitled (*Rowley v. Burgess*, 2 W. R. 652). Where the property is part of the personal estate of a deceased person, the legal personal representative will be required to admit assets (*Knight v. Knight*, 16 Beav. 358; *Chubb v. Carter*, W. N. (1867), 179). Where proceedings to charge a married woman's separate estate with the value of timber cut by her were pending, it was, in a suit instituted in order to execute the trusts of the settlement, considered that she might be allowed the whole income if she first gave security for the value of the timber (*Stacey v. Southey*, 1 Drew. 400)": Dan. Pr., p. 988.

666.

Sale under  
will or settle-  
ment.

[Cf. O. LII.  
r. 6a.]

10. Whenever in an action for the administration of the estate of a deceased person, or execution of the trusts of a written instrument, a sale is ordered of any property vested in any executor, administrator, or trustee, the conduct of such sale shall be given to such executor, administrator, or trustee, unless the Court or a Judge shall otherwise direct.

This rule is an extension of the repealed O. LII., r. 6a. The repealed rule was confined to trustees.

Where there were four trustees, one of whom was plaintiff, the other three being defendants, conduct of the sale was given to the defendants: *Re Gardner*, 48 L. J., Ch. 644.

667.

Writ of  
injunction  
abolished.

[O. LII. r. 8.]

11. No writ of injunction shall be issued. An injunction shall be by a judgment or order, and any such judgment or order shall have the effect which a writ of injunction previously had.

As to injunctions, see r. 6, *supra*.

668.

Injunction  
before or after  
judgment.

12. In any cause or matter in which an injunction has been, or might have been, claimed, the plaintiff may, before or after judgment, apply for an injunction to restrain the defendant or respondent from the repetition or continuance of the wrongful act or breach of contract complained of, or from the commission of any injury or breach of contract of a like kind relating to the same property or right, or arising out of the same contract; and the Court or a Judge may grant the injunction, either upon or without terms, as may be just.

This rule appears to be founded on s. 82 of the C. L. P. Act, 1854. On that section it was held that an injunction continued to exist till it was discharged, and the plaintiff might at any time apply for attachment in case of disobedience: *De la Rue v. Fortescue*, 2 H. & N. 324.

On an application for an interim injunction to compel the defendants to remove a telephone cable that had been carried over the plaintiff's house, the matter was ordered to stand over till the trial, as there was no imminent danger of injury to the plaintiff: *Attenborough v. London, &c. Telephone Co.*, W. N. (1884), 2.

13. Leave to compound a penal action shall not be given in cases where part of the penalty goes to the Crown, unless notice shall first have been given to the proper officer; but in other cases it may be given without notice to any officer.

This and the two succeeding rules reproduce in substance the provisions of R. G. H. T. 1853, rr. 118 to 120.

Order L.  
rr. 13—15a.

669.

Leave to compound penal action.

14. The order to compound a penal action shall expressly state that the defendant undertakes to pay the sum for which the Court has given him leave to compound the action.

670.

Order to contain undertaking.

See note to last rule.

15. When leave is given to compound a penal action, where part of the penalty goes to the Crown, the Queen's half of the composition shall be paid into the hands of the Master of the Crown Office Department of the Central Office for the use of Her Majesty.

671.

Queen's half of penalty.

See note to rule 13.

## II.—RECEIVERS.

15A. In every case in which an application is made for the appointment of a receiver by way of equitable execution, the Court or a Judge, in determining whether it is just or convenient that such appointment should be made, shall have regard to the amount of the debt claimed by the applicant, to the amount which may probably be obtained by the receiver, and to the probable costs of his appointment, and may, if they or he shall so think fit, direct any inquiries on these or other matters before making the appointment.

Equitable execution. Court may direct inquiries before ordering appointment of receiver.

See S. C. Jud. Act, 1873, s. 25, sub-s. 8, *ante*, p. 23; O. XLII., r. 28, *ante*, p. 347, and notes thereto, as to equitable execution and the appointment of a receiver.

*Appointment ex parte.*—*Ex parte* applications for a receiver ought not to be granted, even after judgment, except in cases of emergency: *Lucas v. Harris*, 18 Q. B. D. 127, at p. 134, per Lindley, L. J.

*Amount of debt, &c.*—See *I. v. K.*, W. N. (1884), 63, cited under r. 6, *supra*.

A receiver was appointed to receive so much of a reversionary legacy when it should become payable as would answer the plaintiff's debt and costs. The plaintiff was appointed without security and without salary. The costs of the application were deducted, as at Chambers plaintiff had asked for the appointment of a receiver of the whole legacy: *Macnicoll v. Parnell*, 35 W. R. 773.

*Directions in Q. B. D.*—The following directions were issued 19th March, 1887, to the Summons and Order Department of the Q. B. D. as to orders appointing a receiver by way of equitable execution:—

I. In all cases where the judgment for debt and costs is for more than £50 and less than £100, a direction is to be added to the order that—

“The total amount to be allowed for the costs of the receiver (including his poundage, the costs of obtaining the appointment, of completing the security, passing his accounts and obtaining his discharge) shall not exceed 10 per cent. of the amount for which the judgment is signed.”

II. Where the judgment (for debt and costs) is for a sum less than £50, then—

If the property is freehold or leasehold, the plaintiff should be made (by the order) answerable for the receiver, but no further security need be required, and the receiver should not act without the leave of the Court or a Judge. If the property is personalty (other than leasehold) the plaintiff should be appointed receiver, limiting the amount to be received to the amount of his judgment debt and costs of obtaining the order, not exceeding £4.

*Note.*—It should, in the case of personal property, unless under special circumstances, be shown that the property of which it is proposed to appoint a receiver cannot be seized under a *f. fa.*



Order L.  
rr. 16—18.

672.

Security by  
receiver.

Salary or  
allowance.

Form of  
security.

16. Where an order is made directing a receiver to be appointed, unless otherwise ordered, the person to be appointed shall first give security, to be allowed by the Court or a Judge and taken before a person authorised to administer oaths, duly to account for what he shall receive as such receiver, and to pay the same as the Court or Judge shall direct; and the person so to be appointed shall, unless otherwise ordered, be allowed a proper salary or allowance. Such security shall be by recognizance in the Form No. 21 in Appendix L, unless the Court or a Judge shall otherwise order.

This rule is taken from C. O. XXIV., r. 1.

*Appointment of Receiver generally.*—See S. C. Jud. Act, 1873, s. 25, sub-s. 8, *ante*, pp. 23—27; r. 6, *supra*; Dan. Pr., pp. 1664 *et seq.*; Morgan, pp. 468, 469, 470; Kerr on Receivers; 1 Seton, pp. 410—454. For directions of Practice Masters as to appointment of Receivers in Queen's Bench Division, see *post*, p. 712.

**SECURITY.**—The appointment of a receiver is not complete until security given: *Edwards v. Edwards*, 2 Ch. D. 291. The security usually required is the recognizance of the receiver, with two sureties. The bond of a guarantee association is frequently accepted, and, under special circumstances, the recognizance of the receiver only has been considered sufficient. The recognizance or bond is given to the two senior Chief Clerks for the time being of the Judge to whom the cause or matter is assigned: O. LX., r. 4, *post*, p. 456. The receiver is usually required to give security to cover the full amount which is estimated to come to his hands during the pendency of the receivership; where he is appointed to get in rents or other moneys falling due periodically, his security is usually fixed at double the amount of the annual income. For forms of recognizance and bond, see Dan. Forms, pp. 722—726. For form referred to in the rule, see *post*, p. 648.

*Sureties.*—The sureties must be resident within the jurisdiction: *Cockburn v. Raphael*, 2 S. & S. 453. The liability of the surety extends to all that the receiver would have been required to pay, including the costs of appointing a new receiver: *Maunsell v. Egan*, 3 J. & Lat. 251; *Davson v. Raynes*, 2 Russ. 466. Where a surety has been called upon to pay anything on account of the receiver, he will be entitled to stand in the place of the receiver for anything which may be coming to him in the suit: see *Glossop v. Harrison*, 3 V. & B. 134; *Brandon v. Brandon*, 3 De G. & J. 524. See as to sureties generally, Dan. Pr., pp. 1717—1719.

*Dispensing with security.*—If all parties are *sui juris* and consent, security may be dispensed with: *Tylee v. Tylee*, 17 Beav. 583. The plaintiff has been appointed without security: *Hyde v. Warden*, 1 Ex. D. 309; *Taylor v. Eckersley*, 2 Ch. D. 302. Where a receiver was appointed for the purposes of equitable execution, he was not required to give security, the plaintiff and the receiver undertaking not to act without the leave of the Court: *Hewett v. Murray*, 54 L. J., Ch. 572.

673.

Adjournment  
into Chambers.

17. Where any judgment or order is pronounced or made in Court appointing a person therein named to be receiver, the Court or a Judge may adjourn to Chambers the cause or matter then pending, in order that the person named as receiver may give security as in the last preceding Rule mentioned, and may thereupon direct such judgment or order to be drawn up.

This rule was introduced in 1883.

674.

Passing  
accounts.

Penalties for  
neglect.

18. When a receiver is appointed with a direction that he shall pass accounts, the Court or Judge shall fix the days upon which he shall (annually, or at longer or shorter periods,) leave and pass such accounts, and also the days upon which he shall pay the balances appearing due on the accounts so left, or such part thereof as shall be certified as proper to be paid by him. And with respect to any



such receiver as shall neglect to leave and pass his accounts and pay the balances thereof at the times so to be fixed for that purpose as aforesaid, the Judge before whom any such receiver is to account may from time to time, when his subsequent accounts are produced to be examined and passed, disallow the salary therein claimed by such receiver, and may also, if he shall think fit, charge him with interest at the rate of 5*l.* per cent. per annum upon the balances so neglected to be paid by him during the time the same shall appear to have remained in the hands of any such receiver.

Order L.  
rr. 18—22a.

This rule is taken from C. O. XXIV., r. 2.

*Receiver's accounts.*—See Dan. Pr., pp. 1703—1714; Kerr, pp. 173—185; Dan. Forms, pp. 732—737.

*Balances in hands of receiver.*—A receiver ought not to retain in his hands sums which may be made productive for the benefit of the estate: if he does so, he may be charged with interest: *Potts v. Leighton*, 15 Ves. 273. See also *Fletcher v. Dodd*, 1 Ves. J. 84.

*Receiver responsible for losses.*—A receiver is responsible for any loss which may be occasioned to the estate by his wilful default: *Knight v. Ld. Plymouth*, 3 Atk. 480; *Salway v. Salway*, 2 Russ. & M. 215; *Wren v. Kirton*, 11 Ves. 377.

*Disallowance of salary, &c.*—See *Bristowe v. Needham*, 9 Jur., N. S. 1168; *Harrison v. Boydell*, 6 Sim. 211 (rule applied after discharge of receiver); Dan. Pr., p. 1707.

19. Receivers' accounts shall be in the Form No. 14 in Appendix L, with such variations as circumstances may require.

675.  
Form of  
accounts.

For form referred to, see *post*, p. 641.

20. Every receiver shall leave in the Chambers of the Judge to whom the cause or matter is assigned his account, together with an affidavit verifying the same in the Form No. 22 in Appendix L, with such variations as circumstances may require. An appointment shall thereupon be obtained by the plaintiff or person having the conduct of the cause for the purpose of passing such account.

676.  
Verification  
of accounts.  
Appointment  
for passing.

Cf. C. O. XXIV., r. 3. But note, that under that rule a summons to proceed on the account was required to be taken out; the present rule directs an appointment to be obtained. It is conceived, therefore, that no summons is necessary or proper.

For form referred to, see *post*, p. 649.

*Re-opening accounts at instance of sureties.*—See *Re Birmingham Brewery Co.*, 31 W. R. 415.

21. In case of any receiver failing to leave any account or affidavit, or to pass such account, or to make any payment, or otherwise, the receiver or the parties, or any of them, may be required to attend at Chambers to show cause why such account or affidavit has not been left, or such account passed, or such payment made, or any other proper proceeding taken, and thereupon such directions as shall be proper may be given at Chambers or by adjournment into Court, including the discharge of any receiver and appointment of another, and payment of costs.

677.  
Default of  
receiver.

This rule is taken from C. O. XXXV., r. 23.

22A. A certificate of the Chief Clerk stating the result of a receiver's account shall from time to time be taken. *Form 3 in the Appendix hereto* shall be substituted for Form 22 in Appendix L.

678.  
Certificate of  
chief clerk as  
to receiver's  
accounts.

For form referred to, see *post*, p. 649. The original r. 22 of this Order was repealed in 1884, and the above rule 22A substituted for it.

Order L.  
rr. 23, 24.

III.—LIQUIDATORS.

679.  
Liquidators'  
accounts.

23. The accounts of liquidators shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts.

This rule was introduced in 1883.

IV.—GUARDIANS.

Guardians'  
accounts.

24. The accounts of guardians shall be passed and verified in the same manner as is by this Order directed as to receivers' accounts.

This rule was introduced by R. S. C., Oct. 1884.

ORDER LI.

SALES BY THE COURT.

Order LI.  
r. 1.

I.—IN THE CHANCERY DIVISION.

680.  
Court may  
order real  
estate to be  
sold if neces-  
sary.

1. If in any cause or matter relating to any real estate, it shall appear necessary or expedient that the real estate or any part thereof should be sold, the Court or a Judge may order the same to be sold, and any party bound by the order and in possession of the estate, or in receipt of the rents and profits thereof, shall be compelled to deliver up such possession or receipt to the purchaser, or such other person as may be thereby directed.

This rule is an extension of 15 & 16 Vict. c. 86, s. 55, now repealed.

**SALES BY THE COURT.**—See Dan. Pr., pp. 1071—1110; Dan. Forms, pp. 539—578.

*Sales under 15 & 16 Vict. c. 86, s. 55.*—As to the exercise of the jurisdiction given by this section, see *Mandeno v. Mandeno*, Kay, App. 2; *Swan v. Webb*, 1 W. R. 90; *Prince v. Cooper*, 16 Beav. 546; *London and County Banking Co. v. Dover*, 11 Ch. D. 204. The power might be exercised before the hearing where it was for the protection or benefit of the estate: *Tulloch v. Tulloch*, 3 Eq. 574; *Heath v. Fisher*, 17 W. R. 69; or after the hearing, and before further consideration, if it were shown that it was necessary to resort to the real estate: *Bell v. Turner*, 2 Ch. D. 409.

*Effect of Rule.*—No new power to order a sale of real estate is conferred on the Court by this rule; the Court has power to order a sale only when it is "necessary or expedient" for the purposes of the action before it: *Re Robinson*, 31 Ch. D. 247. The Court must be satisfied that the sale is really "necessary or expedient": *Miles v. Jarvis*, 50 L. T. 48.

"Cause or matter relating to real estate."—An action by an infant heir-at-law of an intestate against the administratrix, claiming accounts of the personal estate, and of the rents and profits of the real estate, is not "a cause or matter relating to real estate" within the meaning of the rule: *Re Staines*, 33 Ch. D. 172.

*Application: how made.*—Applications under this rule must be made at Chambers: O. LV., r. 2 (14), *post*, p. 403.

*Sales under Conveyancing Act, 1881, s. 25.*—See *Morgan*, p. 116; *Union Bank v. Ingram*, 20 Ch. D. 463; *Woolley v. Colman*, 21 Ch. D. 169; *Wade v. Wilson*, 22 Ch. D. 235; *South Western Bank v. Turner*, 31 W. R. 113; *Oldham v. Stringer*, 33 W. R. 251. The discretion given to the Court of ordering a sale instead of foreclosure must be exercised judicially: *Merchant Banking Co. v. London and Hanseatic Bank*, 55 L. J., Ch. 479, at p. 480, per Chitty, J. As to security



for costs of sale, see *Woolley v. Colman* (*ubi sup.*); *Davies v. Wright*, 32 Ch. D. 220. As to conduct of sale, see *Woolley v. Colman* (*ubi sup.*); *Christy v. Van Tromp*, W. N. (1886), 111.

Order LI.  
rr. 1—3.

1A. In all cases where a sale, mortgage, partition, or exchange is ordered, the Court or a Judge shall have power, in addition to the powers already existing, with a view to avoiding expense or delay, or for other good reason, to authorize the same to be carried out, either as at present—

Various modes  
of sale, &c.

- (a) by laying proposals before the Judge in Chambers for his sanction; or
- (b) by proceedings altogether out of Court, any moneys produced thereby being paid into Court or to trustees, or otherwise dealt with as the Judge in Chambers may order.

The above is r. 16 of R. S. C., Dec., 1885.

*Sale out of Court.*—Kay, J., requires that an order for sale out of Court shall provide that the reserved price and auctioneer's remuneration should be fixed by the chief clerk, and that the purchase-money should be paid directly into Court: *Pitt v. White*, 57 L. T. 650; see also *Re Stedman*, 58 L. T. 709.

2. Before any estate or interest shall be put up for sale under a judgment or order, an abstract of the title shall unless otherwise ordered be laid before some conveyancing counsel approved by the Court or Judge for his opinion thereon, to enable proper directions to be given respecting the conditions of sale and other matters connected with the sale. The conditions of sale shall specify a time for the delivery of the abstract of title to the purchaser or to a solicitor.

681.  
Reference of  
title to convey-  
ancing  
counsel.

This rule is taken from 15 & 16 Vict. c. 86, s. 56. See *Gibson v. Woollard*, 5 De G., M. & G. 835; Dan. Pr., p. 1076.

3. Where a judgment or order is given or made, whether in Court or in Chambers, directing any property to be sold unless otherwise ordered, the same shall be sold, with the approbation of the Judge to whom the cause or matter is assigned, to the best purchaser that can be got, the same to be allowed by the Judge, and all proper parties shall join in the sale and conveyance as the Judge shall direct.

682.  
Sale under  
order.

This rule is taken from C. O. XXXV., r. 13.

*Conduct of sale.*—See, as to conduct of sale, where the property is vested in trustees, O. L., r. 10, *ante*, p. 378. As to conduct of sale generally, see Dan. Pr., pp. 1074, 1075. Usually, conduct is given to the plaintiff or other party having carriage of the general proceedings: *Knott v. Cottee*, 27 Beav. 33; *Dale v. Hamilton*, 10 Hare, App. 7. But where it would be clearly more beneficial for the persons interested in the estate, the conduct may be committed to any other party: *Knott v. Cottee*.

*Proceedings connected with sale.*—See, as to particulars of property to be sold, Dan. Pr., p. 1075; as to abstract of title, *Ibid.*, p. 1076; as to conditions of sale, *Ibid.*, pp. 1077, 1078; as to advertisement of sale, *Ibid.*, p. 1078; as to remuneration of auctioneer, *Ibid.*, p. 1079; as to reserved bidding, *Ibid.*, pp. 1079, 1080; as to security for deposits, *Ibid.*, p. 1080; as to leave to bid, *Ibid.*, pp. 1081, 1082; as to directions to auctioneer, *Ibid.*, p. 1082; as to result of sale, *Ibid.*, p. 1083; as to certificate of result, *Ibid.*, p. 1084; as to payment of deposit into Court, *Ibid.*, pp. 1084, 1085; as to sale of unsold lots, *Ibid.*, p. 1085; as to sale by tender, *Ibid.*, p. 1085; as to delivery of abstract, *Ibid.*, p. 1086; as to objections and requisitions, *Ibid.*, p. 1087; as to discharge of purchaser, *Ibid.*, pp. 1088—1090; as to payment of purchase-money into Court, *Ibid.*, pp. 1090—1092; as to compensation, *Ibid.*, p. 1092; as to delivery of possession to the purchaser, *Ibid.*, pp. 1092—1094; as to settlement of conveyances, *Ibid.*, pp. 1094, 1095; as to vesting orders, *Ibid.*, pp. 1097, 1098; as to notice to deal with purchase-money, *Ibid.*, p. 1100; as to payment off of incumbrances, *Ibid.*, pp. 1101, 1102; as to



**Order LI.  
rr. 3—6a.**

application to enforce contract, *Ibid.*, pp. 1103, 1104; as to re-sale, *Ibid.*, p. 1105; as to substitution of purchaser, *Ibid.*, pp. 1105, 1106; as to opening biddings, *Ibid.*, pp. 1106, 1107; as to sales by private contract, *Ibid.*, pp. 1107, 1108.

*Leave to bid.*—Leave to bid at a sale by the Court, granted to a solicitor on the record, relieves him from his fiduciary character, and places him in the same position as an ordinary purchaser: *Boswell v. Coaks*, 23 Ch. D. 302; *S. C.*, affirmed by H. L., 11 App. Cas. 232. As to whether it is the duty of a purchaser from the Court to disclose all the information he possesses, *Ibid.*

*Opening the biddings.*—The practice of opening the biddings no longer prevails, having been abolished by the Sale of Land by Auction Act, 1867 (30 & 31 Vict. c. 48), s. 7, except in cases of fraud or improper conduct in the management of the sale. See *Delves v. Delves*, 20 Eq. 77; *Guest v. Smythe*, 5 Ch. 551; *Brown v. Oakshott*, W. N. (1869), 207. The Act applies to sales by private contract approved by the Court: *Re Bartlett*, 16 Ch. D. 561; *Re Oriental Bank Corporation*, 56 L. T. 868.

No order necessary for payment of purchase-money into Court.

**3A.** No order for the payment of purchase-money into Court shall be necessary, but a direction for that purpose signed by the Chief Clerk shall be sufficient authority for the Paymaster-General to receive the money.

The above is r. 17 of R. S. C., Dec., 1885.

As to a lodgment schedule to be signed by the Chief Clerk, upon which purchase-money can be paid into Court, see S. C. Funds Rules, 1886, r. 5, and Form in Appendix thereto, *post*, pp. 726, 759.

683.  
Affidavits as to reserved biddings.

**4.** Affidavits for the purpose of enabling the Judge to fix reserved biddings shall state the value of the property by reference to an exhibit containing such value, so that the value may not be disclosed by the affidavit when filed.

This rule is taken from Regul., 8 Aug., 1857, r. 13.

For forms of affidavit and valuation, see Dan. Forms, p. 549.

684.  
Particulars and conditions of sale.

**5.** As soon as particulars and conditions of sale settled at Chambers have been printed, two prints thereof, certified by the solicitor to be correct prints of the particulars and conditions settled at the Judge's Chambers, shall be left at Chambers.

This rule is taken from Regul., 8 Aug., 1857, r. 14.

For forms of particulars of sale, see Dan. Forms, p. 541; for forms of conditions of sale, *Ibid.*, pp. 543—547; App. L, No. 15, *post*, p. 643.

685.  
Affidavit of result of sale.

**6.** An office copy of the affidavit of the person appointed to sell of the result of the sale, with the bidding paper and particulars therein referred to, shall be left at Chambers at least one clear day before the day appointed for settling the certificate of the result of the sale.

This rule is taken from Regul., 8 Aug., 1857, r. 15.

A form of the affidavit of result of sale was given in the Rules of 1883, and was No. 16 in App. L. But see the next rule, which annuls that form. An affidavit of result is no longer required.

Auctioneer to sign particulars of sale and certify result.

**6A.** In the case of sales under the direction of the Court, the particulars of sale shall be signed by and the result of the sale shall be certified under the hands of the auctioneer and the solicitor of the party having the conduct of the sale. It shall not be necessary to file any affidavit verifying the particulars or the result of the sale. Form 2 in the Appendix hereto shall be substituted for Form 16 in Appendix L, which is hereby annulled.

The above is r. 18 of R. S. C., Dec., 1885. For the form, see *post*, p. 645.

II.—CONVEYANCING COUNSEL.

Order LI.  
rr. 7—11.

7. The Court or a Judge may refer to the Conveyancing Counsel of the Court any matter relating to the investigation of the title to an estate with a view to an investment of money in the purchase or on mortgage thereof, or with a view to a sale thereof, or to the settlement of a draft of a conveyance, mortgage, settlement, or other instrument, or any other matter which the Court or Judge may think fit to refer, and may receive and act upon the opinion given in the matter referred.

686.  
Power to refer to Conveyancing Counsel of Court.

This and the next rule are taken from 15 & 16 Viet. c. 80, s. 40. By s. 41 of that Act power is given to the Lord Chancellor to appoint not less than six Conveyancing Counsel, of at least 10 years' standing, to be the Conveyancing Counsel to the Court.

*Conveyancing Counsel.*—See Dan. Pr., pp. 962, 963; Dan. Forms, pp. 494, 495.

*Costs of settling drafts by private Counsel.*—Will not be allowed in addition to the costs of settling by the Conveyancing Counsel, on behalf of the same parties, unless expressly directed: O. LXV., r. 22, *post*, p. 487.

*Fees of Conveyancing Counsel.*—Are in the Taxing Master's discretion, subject to appeal: O. LXV., r. 27 (36), *post*, p. 497; *Rumsey v. Rumsey*, 21 Beav. 40.

8. Any party may object to the opinion given by any Conveyancing Counsel, and thereupon the point in dispute shall be disposed of by the Judge at Chambers or in Court, as he may think fit.

687.  
Parties may object to opinion.

9. The business to be referred to the Conveyancing Counsel of the Court shall be distributed among them in rotation by the first clerk to the Registrars of the Chancery Division, and in his absence by the second clerk, and in the absence of the first and second clerks, by such of the other clerks to the Registrars as the Senior Registrar may determine.

688.  
Business referred to Conveyancing Counsel to be distributed in rotation.

This rule is taken from C. O. II., r. 1.

10. The clerk making such distribution shall be responsible for the business being distributed according to regular and just rotation, and in such manner as to keep secret from all persons the rota or succession of Conveyancing Counsel of the Court, and it shall be his duty to keep a record of the references with proper indexes, and to enter therein all such references, with the dates when the same are made.

689.  
Duty of person distributing.

This rule is taken from C. O. II., r. 2.

11. When any business is referred to the Conveyancing Counsel of the Court, a short memorandum or minute of the order of reference shall be prepared and signed by the Registrar if made in Court, or by the Chief Clerk if made in Chambers, and the party prosecuting the order, or his solicitor, shall take the memorandum or minute to the Registrar's clerk, whose duty it is to make such distribution as aforesaid, and such clerk shall add at the foot thereof a note specifying the name of the Conveyancing Counsel of the Court in rotation to whom the business is to be referred, and the memorandum or minute shall be left by the party prosecuting the order, or his solicitor, with the Conveyancing Counsel,

690.  
Opinion of Conveyancing Counsel, how obtained.



**Order LI.  
rr. 11—16.**

and shall be a sufficient authority for him to proceed with the business so referred.

This rule is taken from C. O. II., r. 3.

691.  
Inability or  
refusal of  
counsel.

**12.** In case the Conveyancing Counsel of the Court in rotation shall, from illness or from any other cause, be unable or decline to accept the reference, the same shall be offered to the other Conveyancing Counsel of the Court successively according to their seniority at the bar, until some one of them shall accept the same.

This rule is taken from C. O. II., r. 4.

692.  
Transfer or  
reference to  
particular  
counsel.

**13.** The Judge may, if he thinks fit, direct or transfer a reference to any one in particular of the Conveyancing Counsel of the Court.

This rule is taken from C. O. II., r. 5.

## III.—IN ADMIRALTY ACTIONS.

693.  
Execution of  
commission of  
appraisement,  
or sale.

**14.** Every commission for the appraisement or sale of property under the order of the Court shall, unless the Court or a Judge shall otherwise order, be executed by the Marshal or his substitutes.

For form of commission, see Appendix H., No. 16, *post*, p. 604.

See Roscoe's Admiralty Practice, ed. 2, pp. 154, 231, 232.

694.  
Payment into  
Court by  
Marshal.

**15.** The Marshal shall pay into Court the gross proceeds of sale of any property which shall have been sold by him, and shall at the same time bring into the Registry the account of sale, with vouchers in support thereof, for taxation by the Admiralty Registrar.

As to payment into Court in Admiralty proceedings, see O. XXII., r. 19, *ante*, p. 228, and the Supreme Court Funds Rules, 1886, r. 34, *post*, p. 736, which provide for the money being lodged in the Pay Office.

695.  
Objection to  
Marshal's ac-  
count of  
expenses.

**16.** Any person interested in the proceeds may be heard before the Admiralty Registrar on the taxation of the Marshal's account of expenses, and an objection to the taxation shall be heard in the same manner as an objection to the taxation of a solicitor's bill of costs.

As to objections to taxation, see O. LXV., r. 27 (39) *et seq.*, *post*, p. 498.

**Order LII.  
r. 1.**

## ORDER LII.

## MOTIONS AND OTHER APPLICATIONS.

696.  
Motions.  
[O. LIII. r. 1.]

**1.** Where by these Rules any application is authorized to be made to the Court or a Judge, such application, if made to a Divisional Court, or to a Judge in Court, shall be made by motion.

**MOTIONS IN CHANCERY DIVISION.**—See Dan. Pr., pp. 1546—1561; Dan. Forms, pp. 686—688; 1 Seton, pp. 54—58. Motions are either (1) of course, or (2) special. "*Motions of course* require no notice, and are granted without the Court being called upon to investigate the truth of any allegation or suggestion upon which they are founded, and are not mentioned in Court; but it is the practice for



counsel to sign the brief, and to hand it to the Registrar in Court; who enters it in his book, marks the brief with his initials, and then returns it to counsel. The brief thus signed is then taken to the order of course seat; and the order will be drawn up by one of the Registrar's clerks. A *special motion* is one which it is not matter of course to grant, but which the Court, in the exercise of its discretion, may, on the facts established in support of the application, either grant or refuse. Motions of this description may be made either *ex parte* or upon notice:” Dan. Pr., p. 1547.

Order LII.  
rr. 1—3.

*Proceedings commenced by motion.*—Where proceedings in the Ch. Div. are commenced by notice of motion, the notice of motion must be marked with the name of a Judge: See O. V., r. 9 (c), *ante*, p. 139.

*Evidence on motions.*—See O. XXXVIII., r. 1, *ante*, p. 320.

*Costs on motions.*—See Morgan and Wurtzburg, pp. 46—73; Morgan, pp. 478, 479, and cases there collected. See also O. LXV., r. 27 (33), *post*, p. 496. Where upon an interlocutory motion the plaintiff obtains the relief which he seeks in the action, he is bound to apply to the defendant to have the costs disposed of on motion, and, unless he does so, is precluded from having the extra costs occasioned by going on to trial. But, if the defendant refuses to allow the matter to be disposed of on motion, or if there is any question remaining open between the parties to be decided, the case cannot be so dealt with: *Sonnenschein v. Barnard*, 57 L. T. 712; and see *Sirell v. Abraham*, 8 Beav. 598; *Wilde v. Wilde*, 6 L. T. 185, 275; *Morgan v. G. E. Ry. Co.*, 8 L. T. 270.

*Costs of motion ordered to stand over till the trial.*—Where a motion for injunction is ordered to stand till the trial and the action is dismissed with costs, the costs of the motion will be allowed on taxation without any special mention of them in the judgment: *Gosnell v. Bishop*, 38 Ch. D. 385.

2. No motion or application for a rule *nisi* or order to show cause shall hereafter be made in any action, or (a) to set aside, remit, or enforce an award, or (b) for attachment, or (c) to answer the matters in an affidavit, or (d) to strike off the rolls, or (e) against a sheriff to pay money levied under an execution.

697.  
Rules *nisi* in general abolished.  
[Cf. O. LIII. r. 2.]

This rule does not apply to applications to assign administration bonds: *Goods of Cartwright*, 1 P. D. 422.

*Remission of Referee's report.*—Notice of motion must be given in the case of an application to remit a Referee's report: *Graves v. Taylor*, 27 W. R. 412; *Dyke v. Cannell*, 11 Q. B. D. 180.

3. Except where according to the practice existing at the time of the passing of the Principal Act any Order or Rule might be made absolute *ex parte* in the first instance, and except where notwithstanding Rule 2 a motion or application may be made for an order to show cause only, no motion shall be made without previous notice to the parties affected thereby. But the Court or a Judge, if satisfied that the delay caused by proceeding in the ordinary way would or might entail irreparable or serious mischief, may make any order *ex parte* upon such terms as to costs or otherwise, and subject to such undertaking, if any, as the Court or Judge may think just; and any party affected by such order may move to set it aside.

698.  
Motion on notice.  
[Cf. O. LIII. r. 3.]

Dispensing with notice.

As to *ex parte* applications for an injunction or a receiver under S. C. Jud. Act, 1873, s. 25, sub-s. 8, see O. L., r. 6, *ante*, p. 374, and notes thereto.

*Notice of motion.*—As to form of a notice of motion, see Dan. Pr., p. 1549; Dan. Forms, pp. 23, 24; Chitt. Forms, p. 705. A notice of motion is sufficient which states that the Court will be moved “at the Royal Courts of Justice,” for a Judge is sitting at the Royal Courts of Justice when he is sitting in any part of the building, whether in Chambers or in open Court: *Petty v. Daniel*, 34 Ch. D. 172.

**Order LII.**  
**rr. 3—5.**

*Service.*—"Where the person to be served with a notice of motion is a party suing or defending by a solicitor or in person, the notice is served upon such solicitor or party in the ordinary way. If no appearance has been entered the notice of motion may be filed: O. LXVII., r. 4. If the person to be served is not a party to the action, personal service must be effected, unless an order for substituted service be obtained:" Dan. Pr., p. 1551.

*Leave to serve notice of motion.*—Such leave is required (1) Where the defendant has not appeared, and the time limited for appearance has not expired: r. 9, *infra*; (2) where it is desired to obtain leave to serve short notice: r. 5, *infra*; (3) where an order for substituted service is required: O. LXVII., r. 6; (4) where the person to be served is out of the jurisdiction: Dan. Forms, p. 687, n. (e).

*Affidavit of service.*—As to the time within which an affidavit of service was formerly required to be filed when the respondent did not appear, see *Secar v. Webb*, 25 Ch. D. 84. The C. A. has directed the Chancery Registrars that they may accept, until an opinion of the Court is expressed to the contrary effect, affidavits of service sworn and filed at any time before the order is drawn up; but if the affidavit is sworn after the date of the order, the order is not to be post-dated, and the affidavit is not to be entered formally as evidence; the Registrars are, in such case, to make a memorandum in the margin of the order that the affidavit of service has been sworn and filed, and the recital may be introduced into the order, "No one appearing for A. B., though duly served, &c., as by affidavit appears:" 28 Sol. J. 591.

*Saving a motion.*—See Dan. Pr., p. 1553.

*Abandoned motion.*—Where the party who has given notice of motion fails to appear, the party served and appearing is entitled to an order for his costs: *Berry v. Exchange Trading Co.*, 1 Q. B. D. 77. As to the principle on which the costs of an abandoned motion are taxed, see *Harrison v. Leutner*, 16 Ch. D. 559.

699.  
Contents of  
notice of  
motion in cases  
under Rule 2.

**4.** Every notice of motion to set aside, remit, or enforce an award, or for attachment, or to strike off the rolls, shall state in general terms the grounds of the application; and, where any such motion is founded on evidence by affidavit, a copy of any affidavit intended to be used shall be served with the notice of motion.

*Attachment under O. XXXI., r. 21.*—This rule applies to a notice of motion for attachment for disobedience to an order for discovery under O. XXXI., r. 21: *Litchfield v. Jones*, 25 Ch. D. 64.

*Grounds of application.*—See *Treherne v. Dale*, 27 Ch. D. 66.

*Service of affidavits.*—In *Whitham v. Whitham*, W. N. (1885), 176, Pearson, J., expressed his opinion that the provision for service of evidence in the above rule did not apply to affidavits relating to the procedure, but to affidavits only where some new fact not before the Court appeared: see also *Schirges v. Schirges*, W. N. (1886), 85; but North, J., refused to follow these cases: *Re Lysaght*, W. N. (1887), 23. Where affidavits, though not served with the notice of motion, were served two clear days before the day named in the notice for moving the Court, it was held that this was not such an irregularity as to make the notice invalid: *Hampden v. Wallis*, 26 Ch. D. 746. The Court has power under O. LXX., r. 1, to hear an application to set aside an award, though the affidavits in support are not served with the notice of motion: *Wyggeston Hospital v. Stephenson*, 33 W. R. 551. The affidavits and notice of motion should be served together, and, if not served personally, at the address for service: *Petty v. Daniel*, 34 Ch. D. 172. Where copies of exhibits were not served with a notice of motion to strike a solicitor off the rolls, *Stirling, J.*, refused to hold that the service was bad, the respondent having seen the exhibits, and filed evidence in reply in which he had dealt with them. He, however, expressly guarded himself from saying that as a rule copies of exhibits ought not to be delivered with the affidavits: *Re Hutchings*, W. N. (1887), 254.

700.  
Time for hear-  
ing motion.  
[Cf. O. LIII.  
r. 4.]

**5.** Unless the Court or a Judge give special leave to the contrary there must be at least *two clear days* between the service of a notice of motion and the day named in the notice for hearing the



motion: provided that in applications to answer the matters in an affidavit or to strike off the rolls, the notice of motion shall be served on the parties not less than *ten clear days* before the time fixed by the notice for making the motion.

Order LII.  
rr. 5—11.

Compare C. O. XXXIII., r. 2.

The proviso to this rule was introduced in 1883.

*Short notice of motion.*—Where a party applies for special leave to serve short notice of motion he must distinctly state to the Court that the notice applied for is short; and the same fact must distinctly appear on the face of the notice served on the other party: *Dawson v. Beeson*, 22 Ch. D. 504. In vacation leave to serve short notice of motion must be granted by the Vacation Judge in person, not by the Chief Clerk: *Conacher v. Conacher*, 29 W. R. 230.

*Notice given for day in vacation.*—A notice of motion is not bad by reason of being given for a day not in the sittings: *Re Coulton*, 34 Ch. D. 22 (dissenting from *Daubney v. Shuttleworth*, 1 Ex. D. 53). In *Williams v. De Boinville*, 17 Q. B. D. 180, the Court amended the notice of motion; but see *contra*, *Maullin v. Rogers*, 34 W. R. 592.

6. If on the hearing of a motion or other application the Court or a Judge shall be of opinion that any person to whom notice has not been given ought to have or to have had such notice, the Court or Judge may either dismiss the motion or application, or adjourn the hearing thereof, in order that such notice may be given, upon such terms, if any, as the Court or Judge may think fit to impose.

701.  
Notice not served on all proper parties.  
[O. LIII. r. 5.]

7. The hearing of any motion or application may from time to time be adjourned upon such terms, if any, as the Court or Judge shall think fit.

702.  
Adjournment.  
[O. LIII. r. 6.]

8. The plaintiff shall, without any special leave, be at liberty to serve any notice of motion or other notice or any petition or summons upon any defendant, who, having been duly served with a writ of summons to appear, has not appeared within the time limited for that purpose.

703.  
Service on defendant who has not appeared.  
[O. LIII. r. 7.]

9. The plaintiff may, by leave of the Court or a Judge to be obtained *ex parte*, serve any notice of motion upon any defendant along with the writ of summons, or at any time after service of the writ of summons and before the time limited for the appearance of such defendant.

704.  
Service with writ or before time for appearance.  
[O. LIII. r. 8.]

See, as to form of notice of motion in such case, Dan. Pr., p. 1552.

10. In Admiralty actions, notice of motion together with the affidavits (if any) in support thereof, shall be filed in the Admiralty Registry *three days* at least before the hearing of the motion unless leave shall be given to the contrary; and a copy of the notice of motion and of the affidavits (if any) shall be served on the adverse solicitor before the originals are filed.

705.  
Admiralty actions, filing notice of motion.

This rule is taken from rr. 139, 140, of the Admiralty Rules of 1859. See Roscoe's Admiralty Practice, ed. 2, pp. 250—252.

11. No order shall issue for the return of any writ, or to bring in the body of a person ordered to be attached or committed; but a notice from the person issuing the writ or obtaining the order for attachment or committal (if not represented by a solicitor), or by

706.  
No order for return of writ.



**Order LII.**  
**rr. 11—15.**

his solicitor, calling upon the sheriff to return such writ or to bring in the body within a given time, if not complied with, shall entitle such person to apply for an order for the committal of such sheriff.

This rule was introduced in 1883. Compare R. G. H. T., 1853, r. 132. A notice is substituted for the former side-bar rule.

**707.**  
**Sheriff going**  
**out of office.**

**12.** When any sheriff shall, before going out of office, arrest any defendant, and render return of *cepi corpus*, he may be called upon by a notice, as provided by the last preceding Rule, to bring in the body within the time allowed by law, although he may be out of office before such notice is given.

This rule was introduced in 1883, and is taken from R. G. H. T., 1853, r. 134.

As to the arrest of defendant, see ss. 5 and 6 of the Debtors Act, 1869.

**708.**  
**Dating of**  
**order.**

**13.** Every order, if and when drawn up, shall be dated the day of the week, month, and year, on which the same was made, unless the Court or a Judge shall otherwise direct, and shall take effect accordingly.

This rule was introduced in 1883. By R. G. H. T., 1853, r. 149, it was provided that orders should be dated as of the day on which they were *drawn up*. Compare, as to judgments, O. XLI., rr. 3 and 4, *ante*, pp. 336, 337.

**709.**  
**Dispensing**  
**with drawing**  
**up orders in**  
**certain cases.**

**14.** Where an order has been made not embodying any special terms, nor including any special directions, but simply enlarging time for taking any proceeding or doing any act or giving leave (*a*) for the issue of any writ other than a writ of attachment, (*b*) for the amendment of any writ or pleadings, (*c*) for the filing of any document, or (*d*) for any act to be done by any officer of the Court other than a solicitor, it shall not be necessary to draw up such order unless the Court or a Judge shall otherwise direct; but the production of a note or memorandum of such order, signed by a Judge, Registrar, Master, Chief Clerk, or District Registrar, shall be sufficient authority for such enlargement of time, issue, amendment, filing, or other act. A direction that the costs of such order shall be costs in any cause or matter shall not be deemed a special direction within the meaning of this Rule. The solicitor of the person on whose application such order is made, shall forthwith give notice in writing thereof to such person, if any, as would, if this Rule had not been made, have been required to be served with such order.

This was one of R. S. C. May, 1883. An order giving leave to enter judgment under O. XIV., unless a sum is paid before a day named, need not be served upon the defendant before judgment is signed upon it: *Hopton v. Robertson*, W. N. (1884), 77.

**710.**  
**Orders not**  
**necessary for**  
**judgment *nunc***  
***pro tunc*.**

**15.** It shall not be necessary to obtain an order to enter a judgment or order *nunc pro tunc*, but in all cases in which such entries were formerly made under orders of course, the solicitor applying to have a judgment or order so entered, shall leave with the clerk of entries a memorandum in writing countersigned by the Chancery Registrar, and bearing a stamp according to the scale of Court fees for the time being in force.

This was one of R. S. C. May, 1883.

**16.** At the foot of every petition (not being a petition of course) presented to the Court, and of every copy thereof, a statement shall be made of the persons, if any, intended to be served therewith, and if no person is intended to be served, a statement to that effect shall be made at the foot of the petition and of every copy thereof.

**Order LII.**  
**rr. 16—18.**

**711.**

Statement of persons to be served with petition.

This rule is taken from C. O. XXXIV. r. 1. The footnote should describe the persons to be served by name, and not simply as plaintiffs or defendants: *Anon.*, W. N. (1876), 219; *Meyrick v. Laws*, W. N. (1877), 223; Dan. Pr., p. 1563.

**PETITIONS GENERALLY.**—See Dan. Pr., pp. 1561—1573; Dan. Forms, pp. 689—691; 1 Seton, pp. 49—53. A petition is a pleading: S. C. Jud. Act, 1873, s. 100. The rules, therefore, as to preparation and delivery of pleadings (O. XIX., rr. 4, 9, 10, 11, *ante*, pp. 205, 208), apply to petitions.

**Answering petitions.**—Petitions which require to be answered must be answered in the name of the senior Registrar: O. LXII., r. 18, *post*, p. 464; except that petitions presented in the District Registries of Liverpool and Manchester respectively must be answered in the name of one of the District Registrars of the same respective Registries: R. S. C., May, 1887, r. 2, *post*, p. 516.

**Address for service.**—As to the endorsement of an address for service of petitions, see O. IV., r. 4, *ante*, p. 136.

**Assignment to Judge in Chancery Division.**—See O. V., r. 9 (d), *ante*, p. 139.

**Evidence.**—May be given by affidavit: O. XXXVIII., r. 1, *ante*, p. 320.

**Filing petitions.**—See O. LXI., r. 15, *post*, p. 458.

**Service out of jurisdiction.**—See note to O. XI., r. 1, *ante*, p. 154.

**Costs.**—As to costs of appearance of persons served, and persons whose appearance is objected to, see O. LXV., r. 27 (19), *post*, p. 492.

**Petitions under Trustee Acts.**—In all petitions under the Trustee Acts, the last paragraph should state the particular section of the Act under which it is proposed that the order should be made: *Anon.*, 84 L. T. (newspaper), 23; *Re Hall's Settlement Trusts*, 58 L. T. 76; *Re Moss's Trusts*, 36 W. R. 316.

**17.** Unless the Court or a Judge gives leave to the contrary, there must be at least *two clear days* between the service and the day appointed for hearing a petition.

**712.**

Time for hearing petition.

This rule is taken from C. O. XXXIV., r. 2. Compare r. 5, *supra*, as to motions.

**Service of petitions generally.**—See Dan. Pr., p. 1565. A petition must be served on a respondent personally, unless he is a party to the action in which the petition is presented; in which case the petition must be served on such party or his solicitor in the ordinary way. In case of non-appearance, service may be effected by filing.

**Service out of jurisdiction.**—Leave has been given to serve petitions out of the jurisdiction: *Shurmer v. Hodge*, W. N. (1866), 304; *Re Bonelli's Electric Telegraph Co.*, 18 Eq. 655; *Re Haney*, 10 Ch. 275; *Re Morant*, W. N. (1879), 144. The case of *Re Busfield*, 32 Ch. D. 123 (cited under O. XI., r. 1, *ante*, p. 154), may be considered as having thrown doubt on the jurisdiction to authorize foreign service of a petition. But, since that decision, service out of the jurisdiction of petitions for payment of funds out of Court has been sanctioned: *Colls v. Robins*, 55 L. T. 479; *Re Ruddiman's Trusts*, 31 Sol. J. 271; *Re Gordon's Settlement Trusts*, W. N. (1887), 192; *Re Jellard*, W. N. (1888), 184.

**18.** In the case of applications under Acts of Parliament directing the purchase-money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part

**713.**

Applications dealing with purchase-money paid into Court under statute.



**Order LII.  
rr. 18—22.**

thereof, or, if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same.

This rule is taken from C. O. XXXIV., r. 3.

*Affidavit of title.*—See Dan. Pr., p. 2147; Morgan, pp. 29, 30, and cases there cited. Fry, J., declined to dispense with the affidavit, though the application was by a large public body for interim investment and payment of dividends: *Re Byron's Charity*, W. N. (1883), 67.

714.  
Title and form  
of petition,  
summons, &c.,  
under 22 & 23  
Vict. c. 35,  
s. 30.

**19.** All petitions, summonses, statements, affidavits, and other written proceedings for the opinion, advice, or direction of a Judge under the 30th section of the Act 22 & 23 Vict. c. 35, shall be intitled in the matter of that Act, and in the matter of the particular trust, will, or administration, and every such petition or statement shall state the facts concisely, and shall be divided into paragraphs numbered consecutively.

This rule is taken from G. O. of March 20, 1860, r. 1.

**APPLICATIONS UNDER 22 & 23 Vict. c. 35, s. 30.**—See Dan. Pr., pp. 2228—2233; Morgan, pp. 102, 103; Dan. Forms, pp. 954, 955.

*How made.*—Application may be made by petition or summons, but is generally made by petition: *Re Dennis*, 5 Jur., N. S. 1388.

*Signature of Counsel.*—The petition or statement (required in case of an application by summons) must be signed by counsel: 23 & 24 Vict. c. 38, s. 9; and this is still necessary, notwithstanding O. XIX., r. 4: *Re Boulton*, 30 W. R. 596.

*Service.*—The petitioners must serve such persons as they think proper, and must not bring on the petition merely to ascertain who ought to be served: *Re Green*, 6 Jur., N. S. 530. For cases in which service on persons beneficially interested has been dispensed with, see *Re Tuck*, W. N. (1869), 15; *Re Larkin*, W. N. (1872), 85; *Re French*, 15 Eq. 68.

*Evidence.*—No evidence is admissible: *Re Mockett*, Johns. 628.

*Appeal.*—See S. C. Jud. Act, 1873, s. 19; *Re Norris*, W. N. (1883), 35, 65.

*Costs.*—"The costs of the application are in the discretion of the Judge, and will in general be directed to be paid out of the *corpus* of the trust estate (*Re Leslie*, 2 Ch. D. 185; *Re M'Veagh*, 1 Seton, p. 491; *Re Elwes*, *ibid.*); unless the application relates to the income of the property, in which case the costs may be ordered to be paid out of income (*Re T.*, 15 Ch. D. 78; *Re Speller*, 6 Jur., N. S. 386)." Dan. Pr., p. 2233. See also O. LXV., r. 26, *post*, p. 488.

*Cases within the section.*—See Dan. Pr., pp. 2229—2232; Morgan, p. 103.

715.  
Proceeding on  
summons  
under 22 & 23  
Vict. c. 35,  
s. 30.

**20.** At the time when any such summons, as in the last preceding rule mentioned, is sealed, the statement upon which the same is grounded shall be left at the Chambers of the Judge to whom the same is assigned, and shall on the conclusion of the proceeding be transmitted to the Chancery Registrar by the Chief Clerk, with the minutes of the opinion, advice, or direction given by the Judge, and the Registrar shall cause such statement to be transmitted to the Central Office, to be there filed.

This rule is taken from G. O. of March 20, 1860, r. 2.

716.  
Service of  
petition, &c.,  
under r. 19.

**21.** Every such petition or summons as in Rule 19 mentioned, shall be served *seven clear days* before the hearing thereof, unless the person served shall consent to a shorter time.

This rule is taken from G. O. of March 20th, 1860, r. 3.

717.  
Recording  
opinion of  
Judge.

**22.** The opinion, advice, or direction of the Judge, as in Rule 19 mentioned, shall be passed and entered and remain as of record in



the same manner as any order made by the Court or a Judge, and the same shall be termed "a judicial opinion," or "judicial advice," or "judicial direction," as the case may be.

**Order LII.**  
rr. 22, 23.

This rule is taken from G. O. of March 20th, 1860, r. 4.

**23.** Any agreement in writing between the solicitors in Admiralty actions, dated and signed by the solicitors of both parties, may, if the Admiralty Registrar think it reasonable and such as the Judge would, under the circumstances, allow, be filed, and shall thereupon become an order of Court, and have the same effect as if such order had been made by the Judge in person.

718.  
Agreements in Admiralty actions to be filed as orders.

This rule is taken from No. 155 of the Admiralty Rules of 1859.

See as to filing documents in Admiralty actions, O. LXVI., rr. 8, 9, *post*, p. 506.

See *The Ardandhu*, 11 P. D. 40; *The Karo*, 13 P. D. 24.

## ORDER LIII.

**Order LIII.**  
rr. 1—4.

### I.—ACTION OF MANDAMUS.

**1.** The plaintiff, in any action in which he shall claim a mandamus to command the defendant to fulfil any duty in the fulfilment of which the plaintiff is personally interested, shall indorse such claim upon the writ of summons.

719.  
Mandamus to be claimed in writ.

This Order was introduced in 1883.

By s. 68 of the C. L. P. Act, 1854, it was provided that the plaintiff in any action, except replevin and ejectment, might claim a writ of mandamus compelling the defendant to fulfil any duty in the fulfilment of which the plaintiff was personally interested. And by S. C. Jud. Act, 1873, s. 25, sub-s. 8, a mandamus may be granted in all cases in which it shall appear to the Court to be just or convenient. As to the construction placed on these sections, see note to s. 25, *ante*, p. 23.

As to mandamus, see Chitt. Arch. pp. 1274—1276; Chitt. Forms, pp. 636, 637.

As to mandamus in the Chancery Division, see Dan. Pr., pp. 1638 *et seq.*

**2.** The indorsement shall be in the Form given in Section IV. of Appendix A, Part III.

720.  
Form of indorsement.

For the form referred to, see *post*, p. 540.

**3.** If judgment be given for the plaintiff, the Court or Judge may by the judgment command the defendant either forthwith, or on the expiration of such time and upon such terms as may appear to the Court or a Judge to be just, to perform the duty in question. The Court or a Judge may also extend the time for the performance of the duty.

721.  
Judgment if mandamus claimed.

Compare C. L. P. Act, 1854, ss. 71—73, and C. L. P. Act, 1860, s. 30.

**4.** No writ of mandamus shall hereafter be issued in an action, but a mandamus shall be by judgment or order, which shall have the same effect as a writ of mandamus formerly had.

722.  
Judgment or order substituted for writ.

This rule follows the provisions of O. L., r. 11, *ante*, p. 378, which abolishes writs of injunction and substitutes a judgment or order.

Order LIII.  
rr. 5—15.

II.—PREROGATIVE MANDAMUS.

[The rules relating to Prerogative Mandamus, which constituted this Part of O. LIII., rr. 5—15, were abrogated by the Crown Office Rules, 1886, r. 307. The Crown Office Rules which deal with this subject are rr. 60—79: see Short's Crown Office Rules and Forms, pp. 34—39.]

Order LIV.  
rr. 1—5.

ORDER LIV.

APPLICATIONS AND PROCEEDINGS AT CHAMBERS.

I.—General.

734.  
Summons.  
[O. LIV. r. 1.]

1. Every application at Chambers not made *ex parte* shall be made by summons.

Cf. 15 & 16 Vict. c. 86, s. 28. As to jurisdiction in Chambers, see S. C. Jud. Act, 1873, s. 39, *ante*, p. 36.

735.  
*Ex parte* applications.

2. Every application for payment or transfer out of Court made *ex parte*, and every other application made *ex parte* in which the Judge or proper officer shall think fit so to require, shall be made by summons.

This rule was introduced in 1883. Under the former practice in the Queen's Bench Division no summons was necessary on any *ex parte* application. It was otherwise in Chancery.

736.  
Alteration of  
summons.

3. Summonses shall not be altered after they are sealed except upon application at Chambers.

This rule is taken from Regul., 8 Aug., 1857, r. 1.

737.  
Service of  
summons.

4. An originating summons, where service is necessary, shall be served *seven clear days* before the return thereof. Every other summons shall be served *two clear days* before the return thereof, unless in any case it shall be otherwise ordered.

This rule is founded on C. O. XXXV., r. 7.

*Exceptions to Rule.*—Summonses for directions under O. XXX., *ante*, p. 249, and summonses under O. XIV., *ante*, p. 166, are returnable in *four days*.

738.  
Proceedings on  
non-attendance.

5. Where any of the parties to a summons fail to attend, whether upon the return of the summons, or at any time appointed for the consideration or further consideration of the matter, the Judge may proceed *ex parte*, if, considering the nature of the case, he think it expedient so to do; no affidavit of non-attendance shall be required or allowed, but the Judge may require such evidence of service as he may think just.

This rule is taken from C. O. XXXV., r. 10.

6. Where the Judge has proceeded *ex parte*, such proceeding shall not in any manner be reconsidered in the Judge's Chambers, unless the Judge shall be satisfied that the party failing to attend was not guilty of wilful delay or negligence; and in such case the costs occasioned by his non-attendance shall be in the discretion of the Judge, who may fix the same at the time, and direct them to be paid by the party or his solicitor before he shall be permitted to have such proceeding reconsidered, or make such other order as to such costs as he may think just.

Order LIV.  
rr. 6—10.

739.

Reconsideration of *ex parte* proceedings.

Costs.

This rule is taken from C. O. XXXV., r. 11.

7. Where a proceeding in Chambers fails by reason of the non-attendance of any party, and the Judge does not think it expedient to proceed *ex parte*, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the absent party or by his solicitor personally.

740.

Costs against non-attending party where no proceeding *ex parte*.

This rule is taken from C. O. XL., r. 31.

8. Where matters in respect of which summonses have been issued are not disposed of upon the return of the summons, the parties shall attend from time to time without further summons, at such time or times as may be appointed for the consideration or further consideration of the matter.

741.

Adjournment for further consideration.

This rule is taken from C. O. XXXV., r. 14.

9. In every cause or matter where any party thereto makes any application at Chambers, either by way of summons or otherwise, he shall be at liberty to include in one and the same application all matters upon which he then desires the order or directions of the Court or Judge; and upon the hearing of such application it shall be lawful for the Court or Judge to make any order and give any directions relative to or consequential on the matter of such application as may be just; any such application may, if the Judge thinks fit, be adjourned from Chambers into Court, or from Court into Chambers.

742.

Power to include everything in one summons.

This rule was introduced in 1883.

Cf. 15 & 16 Vict. c. 80, s. 27.

*Adjournment in Chancery Division.*—See Dan. Pr., pp. 961, 973, 974. "Where a proceeding is pending before the Chief Clerk, the hearing before the Judge, whether in Court or in Chambers, is merely a continuation of the hearing begun before the Chief Clerk (*Leeds v. Lewis*, 3 Jur., N. S. 1290). An adjournment to the Judge is not in the nature of an appeal, and the party who has required it should not be ordered to pay the costs of it merely because the opinion of the Judge is against him (*Re Watts*, 22 Ch. D. 5). It is in the discretion of the Judge to hear matters in Chambers, or adjourn them into Court (*Re Agriculturist Cattle Insurance Co.*, 3 De G., F. & J. 194):" Dan. Pr., p. 961.

Adjournment into and from Court.

*Adjournment from Court into Chambers.*—See, as to the Registrar's note, O. LV., r. 29, *post*, p. 414.

10. A summons other than an originating summons shall be in the Form No. 1 in Appendix K, with such variations as circumstances may require, and shall be addressed to all the persons on whom it is to be served.

743.

Form of summons.

For form, see *post*, p. 611.



**Order LIV.**  
**rr. 11, 12.**

744.

Preparation  
and issue of  
summons.

[Cf. O. LIV.  
r. 9.]

**II.—Queen's Bench and Probate Divorce and Admiralty Divisions.**

**11.** In all cases of applications originating in Chambers, a summons shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and in Admiralty actions in the Admiralty Registry, and when so sealed shall be deemed to be issued. The person obtaining a summons shall leave at the Central Office or Admiralty Registry, as the case may be, a copy thereof, which shall be filed, and stamped in the manner required by law.

This rule, which was partly new in 1883, reproduces the practice existing at the time these rules came into operation.

745.

Jurisdiction of  
Masters and  
Registrars.

[Cf. O. LIV.  
r. 2.]

**12.** In the Queen's Bench Division a Master, and in the Probate Divorce and Admiralty Division a Registrar, may transact all such business and exercise all such authority and jurisdiction in respect of the same, as under the Acts or these Rules may be transacted or exercised by a Judge at Chambers, except in respect of the following proceedings and matters; that is to say,—

- (a.) All matters relating to criminal proceedings or to the liberty of the subject :
- (b.) Granting leave for service out of the jurisdiction of a writ, or notice of a writ, of summons :
- (c.) The removal of actions from one Division or Judge to another Division or Judge :
- (d.) The settlement of issues, except by consent :
- (e.) Inspection and other orders under Order L., Rules 1 to 5 :
- (f.) Appeals from District Registrars :
- (g.) Prohibitions :
- (h.) Injunctions and other orders under sub-section 8 of section 25 of the principal Act :
- (i.) Awarding of costs, other than the costs of or relating to any proceeding before a Master, or Registrar, and other than any costs which by these Rules, or by the order of the Court or a Judge, he is authorised to award :
- (k.) Reviewing taxation of costs :
- (l.) Orders absolute for charging stocks, funds, annuities, or share of dividends, or annual proceeds thereof :
- (m.) Acknowledgments of married women.

*Effect of Rule.*—This rule reproduces the provisions of the repealed O. LIV., rr. 2 and 2a, but with some additions to the jurisdiction of the master in Queen's Bench cases.

The most important of these additions are, (1) the removal of all the exceptions to a master's jurisdiction in interpleader (O. LVII., *post*, p. 429), and (2) the enlarged power to award costs. See (i) *supra*.

*Assignment of actions.*—See, as to assignment of actions to masters, O. V., rr. 7, 8, *ante*, p. 138, and rr. 13 to 18 of this order, *infra*. As to the summons for directions before the master, see O. XXX., *ante*, p. 249.

(i.) *Awarding costs.*—A master has no jurisdiction in interpleader proceedings over the costs of the action: *Hansen v. Maddox*, 12 Q. B. D. 100. He has power to deal with the costs of the examination of a party, who, having insufficiently answered interrogatories, was ordered to attend for *viva voce* examination: *Vicary v. G. N. Ry. Co.*, 9 Q. B. D. 168.

*Power of Court to review Master's report.*—As to the power of the Court to

review the evidence before a master in a matter that had been referred to him to report upon, see *Walmsley v. Mundy*, 13 Q. B. D. 807.

Order LIV.  
rr. 12—18.

13. Six of the Masters shall be selected (according to a rota to be fixed, and submitted to the approval of the Lord Chief Justice of England, before the commencement of the Christmas vacation in each year,) to attend as Masters at Chambers in the Queen's Bench Division during each of the four sittings of the offices in the year.

*Effect of Rules.*—The provisions of this and the next five succeeding rules were introduced in 1883, and were intended to give effect to the provisions of O. V., rr. 6 to 8, by which every action in the Queen's Bench Division is to be assigned to one particular master, by whom every application in the action (capable of being dealt with by a master) is to be disposed of.

Under this procedure an action does not become assigned to a master until some application in the action is made at Chambers (r. 17). Such application is made to one of the sitting masters, according to the alphabetical division of actions arranged by the masters (r. 15), and thereupon the action becomes assigned to such master; all documents in the action are marked with the name of such master, and every subsequent application in the action, including the final taxation of the costs, is made to such master, whether he still continues to be one of the sitting masters or not (r. 18).

14. The six Masters, to whom, according to such rota, the attendance during any particular sittings has been allotted, shall, before the first day of such sittings, by arrangement amongst themselves, select three of their number to sit, one in each of the three rooms appropriated for that purpose in the Royal Courts of Justice every Monday, Wednesday, and Friday throughout such sittings, the remaining three to sit on Tuesdays, Thursdays, and Saturdays throughout the same sittings.

See note to last preceding rule.

15. Each of the Masters so selected shall, when so sitting at Chambers, occupy the same room, and take all applications (under such alphabetical division of actions as the Masters may from time to time arrange) proper to be made to a Master at Chambers, except applications in such actions as may have been under the provisions of Order V. assigned to any other Master.

16. The arrangements made under the three last preceding Rules shall be publicly announced in such manner as the Lord Chief Justice of England shall from time to time direct.

17. Every application to a Master at Chambers shall, at the time of hearing (unless any other Master's name shall already have been marked thereon), be marked by such Master with his name, and the cause or matter in which such application has been so marked shall thereupon become assigned to such Master.

Under this rule actions in which no interlocutory applications are made are not assigned to any Master. The assignment takes place on the first application made to the then proper sitting Master.

18. Every subsequent application, which under the provisions of Order V. must be made to the same Master, shall, if during any sittings, from urgency or other cause, it cannot conveniently be heard on the days when, under the above-mentioned arrangements, such Master would be sitting in the proper room as Master at Chambers, or if it is made at any time after the sittings of such

746.

Rota of six Masters for Chamber business in Queen's Bench Division.

747.

Sittings of Masters.

748.

Applications to Masters at Chambers.

749.

Announcement of arrangements.

750.

Marking of applications with Master's name and assignment to Master.

751.

Subsequent applications to be made to Master to whom cause is assigned.



**Order LIV.  
rr. 18—24.**

Master have under the same arrangements ceased, be taken by such Master in his own room, at such time as he may, either by special appointment in any particular case or by general rule to be published in the ante-room of Masters' Chambers and other convenient places, direct.

See notes to rr. 13, 14, 15, and 17.

752.  
Debtors'  
summonses  
to be heard by  
Masters.

Committal to  
be by Judge.

**19.** *All summonses under the Debtors Act, 1869, shall be heard in the first instance, if issuing out of the Central Office, before a Master, and if issuing out of a District Registry before the District Registrar, who shall respectively have power to make any order as to payment by instalments; but if it appears to him to be a case for committal, he shall adjourn the summons to be heard before a Judge.*

This rule, although it has not been expressly repealed, has been entirely superseded by the provisions of the Bankruptcy Act, 1883, and the General Rules made under that Act, by which judgment debtors' summonses have become bankruptcy business. See Bankruptcy Act, 1883, s. 103, and the Bankruptcy Rules, 1886, Nos. 355—362. The effect of these rules, taken with the directions given by the Bankruptcy Judge (Mr. Justice Cave), is that judgment debtor summonses in High Court actions of an amount exceeding £50 are disposed of by the Bankruptcy Judge. Other judgment debtors' summonses are disposed of by the County Court Judges.

753.  
Reference by  
Master to  
Judge.  
[O. LIV. r. 3.]

**20.** If any matter appears to the Master proper for the decision of a Judge, the Master may refer the same to a Judge, and the Judge may either dispose of the matter or refer the same back to the Master with such directions as he may think fit.

754.  
Appeal from  
Master to  
Judge.  
Indorsement.  
[Cf. O. LIV.  
r. 4.]

**21.** Any person affected by any order or decision of a Master may appeal therefrom to a Judge at Chambers. Such appeal shall be by way of indorsement on the summons by the Master at the request of any party, or by notice in writing to attend before the Judge without a fresh summons, within *four days* after the decision complained of, or such further time as may be allowed by a Judge or Master.

*Effect of Rule.*—Part of this rule was introduced in 1883. Under the repealed rules (O. LIV., r. 4) an appeal from a Master to a Judge had to be made by a summons returnable within four days after the decision complained of: *Bell v. North Staffordshire Ry.*, 4 Q. B. D. 205. By the present rule an appeal summons is no longer necessary, and the appeal will be by indorsement or by notice. If no Judge is sitting within the four days it will apparently, by analogy with the former practice, be sufficient to give notice to attend on the first day when he will sit; and when the appeal is heard the time can be enlarged: *Gibbons v. The London Financial Association*, 4 C. P. D. 263. As to enlarging time after the time limited has expired, where the circumstances of the case justify this being done, see O. LXIV., r. 7, *post*, p. 469; and *Burke v. Rooney*, 4 C. P. D. 226; *Carter v. Stubbs*, 6 Q. B. D. 116.

755.  
Appeal no  
stay.  
[O. LIV. r. 5.]

**22.** An appeal from a Master's decision shall be no stay of proceeding unless so ordered by a Judge or Master.

756.  
Appeal from  
Judge to Divi-  
sional Court.  
[Cf. O. LIV.  
r. 6.]

**23.** In the Queen's Bench Division the appeal from a decision of a Judge at Chambers shall be to a Divisional Court.

757.  
Motion on  
appeal.

**24.** In the Queen's Bench Division, every appeal to the Court from any decision at Chambers shall be by motion, and shall be made within *eight days* after the decision appealed against, or if no



Court to which such appeal can be made shall sit within such eight days, then on the first day on which any such Court may be sitting after the expiration of such eight days.

As to the practice on motions generally, see O. LIV., *ante*, p. 386, and notes thereto.

*Time for motion.*—By this rule the motion must be made within the eight days; it is not enough that notice of motion be given within that time: *Fox v. Wallis*, 2 C. P. D. 45.

If the eighth day is a Sunday, then by O. LXIV., r. 3, *post*, p. 463, the motion may be made on Monday: see *Taylor v. Jones*, 45 L. J., C. P. 110.

In *Stirling v. Du Barry*, 5 Q. B. D. 65, an order was made at Chambers on June 20th. On June 24th the defendant gave notice of appeal to a Divisional Court for Saturday the 28th. The Court sat to hear motions on the 26th, and sat on the 28th, but not to hear motions. The motion came on on Monday the 30th, and was held to be out of time.

*Notice of motion given for day out of sittings.*—Such notice was held bad in *Daubney v. Shuttleworth*, 1 Ex. D. 53; *Maullin v. Rogers*, 34 W. R. 592; but leave to amend was given in *Williams v. De Boinville*, 17 Q. B. D. 180. See also *Re Coulton*, 34 Ch. D. 22, where *Daubney v. Shuttleworth* was not followed.

25. The following Rules numbered 26 to 29, both inclusive, shall apply to all applications at Chambers in the Queen's Bench Division: but shall not apply to proceedings in District Registries.

26. Unless a Judge otherwise specially directs, summonses for time only shall be returnable at 10.30 in the forenoon, and be heard by the Masters in priority to other business. Other summonses shall, unless a Judge otherwise specially directs, be returnable at successive hours, commencing at 11 in the forenoon. In settling the number of summonses returnable at each hour regard shall be had to the nature of the several applications.

27. Each summons, not being a summons for time only, shall, when issued, be entered by the proper officer in a list. The lists of summonses shall distinguish those which a Master has jurisdiction to hear from those which a Master has not jurisdiction to hear, and those which are to be attended by counsel from those which are not to be so attended.

28. The summonses in each list for hearing by a Judge or Master shall be called on in their order. If when a summons is called on neither party appears, the summons shall be passed over until the list for the hour has been gone through. The summonses passed over shall then be called on a second time in their order. If neither party appears to a summons so called on it shall be struck out.

This rule partly reproduces the provisions of the repealed O. LIV., r. 12. Under the repealed rule a procedure was provided in case of non-attendance. This is now provided for by rr. 5 to 7 of this order, *supra*.

29. An order shall be in the Form No. 2 in Appendix K with such variations as circumstances require. It shall be sealed, and shall be marked with the name of the Judge or Master by whom it is made.

For form, see *post*, p. 611.

See also O. LII., r. 14, *ante*, p. 390, as to when the drawing up of an order may be dispensed with.

Order LIV.  
rr. 24—29.

Time for  
motion.  
[O. LIV. r. 6.]

758.  
Procedure in  
Queen's Bench  
Chambers.  
[Cf. O. LIV.  
r. 7.]

759.  
Hours of  
returns.  
[Cf. O. LIV.  
r. 10.]

760.  
List of sum-  
monses.  
[O. LIV. r. 11.]

761.  
Hearing of  
summonses.  
[Cf. O. LIV.  
r. 12.]

762.  
Form of order.  
[O. LIV. r. 13.]

Order LV.  
rr. 1, 2.

ORDER LV.

CHAMBERS IN THE CHANCERY DIVISION.

I.—General.

763.  
Chambers and  
Court busi-  
ness to be  
carried on in  
conjunction.

1. The business in Chambers of the Judges of the Chancery Division, to whom Chambers are attached, shall be carried on in conjunction with their Court business.

This rule is taken from 15 & 16 Vict. c. 80, s. 12.

Counsel to be  
heard in  
Chancery  
Chambers.

1A. In any proceeding before the Judge in Chambers any party may, if he so desire, be represented by counsel.

R. S. C. Dec. 1885, r. 19.

764.  
Chancery  
Chamber  
business.

2. The business to be disposed of in Chambers by Judges of the Chancery Division shall consist of the following matters, in addition to the matters which under any other Rule or by statute may be disposed of in Chambers :

Cf. C. O. XXXV., r. 1.

Payment out  
under judg-  
ment declaring  
rights, &c.

(1.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights or where the title depends only upon proof of the identity or the birth, marriage, or death of any person :

*Effect of Rule.*—The generality of this sub-section is not cut down by sub-s. 5, or any of the sub-sections following the present one; and consequently an application under the Trustee Relief Acts for the payment out of Court of a fund, even though it exceeds £1,000, where the title of the applicant merely depends upon proof of his birth, should be made by summons, and not by petition: *Re Broadwood*, 55 L. T. 312; *Re Brandram*, 25 Ch. D. 366; but see *Re Barker*, W. N. (1884), 237; *Re Rhodes*, 31 Ch. D. 499. In a case of real difficulty the costs of a petition will be allowed, even if the application might have been made by summons, but the mere fact that the fund exceeds £1,000 is not sufficient to justify the presentation of a petition: *Bates v. Moore*, 38 Ch. D. 381.

*Order declaring rights.*—As to what amounts to an order declaring the rights of a person, see *Re Brandram*, 25 Ch. D. 366.

Payment out  
where funds  
under 1,000l.

(2.) Applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where the cash does not exceed £1,000 or the securities do not exceed £1,000 nominal value :

*Effect of Rule.*—The general words of this sub-section, not being cut down by sub-s. 7, applications for payment out of sums not exceeding £1,000 paid in under the Lands Clauses Act, must now be made by summons: *Re Maidstone and Ashford Ry. Co.*, 25 Ch. D. 168; *Re Madgwick*, 25 Ch. D. 371; *Re Calton's Trusts*, 25 Ch. D. 240.

*Fund representing real estate.*—An application for payment out of a fund in Court representing real estate should be supported by an affidavit (*prima facie* to be made by the applicant) of no charge or incumbrance affecting the fund in question: *Williams v. Ware*, 57 L. J., Ch. 497.



*Amount of fund.*—Where the fund exceeds £1,000, even though the amount sought to be dealt with is less than that sum, the application cannot be made by summons: *May v. Dowse*, W. N. (1884), 122. So, too, where the cash to be paid out was less than £1,000, and the securities to be transferred were less than £1,000, but together exceeded that amount: *Re Haworth*, W. N. (1885), 48. So, where the fund originally exceeded £1,000, but had been reduced by part payment: *Re Evans*, 54 L. T. 527; and so also, where the limit was exceeded by interest which accrued, but was not yet credited: *Ex parte Trustees of Finsbury Savings Bank*, W. N. (1886), 150. Costs of a petition for payment out of £447 Bank Stock were, under the circumstances of the case, allowed, but such an application should in general be by summons: *Re Arnold*, W. N. (1887), 122; and see *De Grey's Entailed Estate*, W. N. (1887), 241. A summons had been issued in the reasonable expectation that an order could be made in Chambers, but it was found necessary to make an application by petition. The extra costs of the summons were allowed: *Re Jellard's Trusts*, W. N. (1888), 42.

Order LV.  
r. 2.

- (3.) Applications for payment to any person of the dividend or interest on any securities standing to the credit of any cause or matter, whether to a separate account or otherwise:

Payment of dividends.

Cf. C. O. XXXV., r. 1 (1).

- (4.) Applications under 36 Geo. III. c. 52, s. 32 (the Legacy Duty Act), in all cases where the money or securities in Court do not exceed £1,000 or £1,000 nominal value:

Legacy Duty Act.

Cf. C. O. XXXV., r. 1 (2).

*Advancement.*—An application for an advancement to an infant out of funds in Court exceeding £1,000 paid in under this Act must be by petition, not by summons: *Re Coore*, W. N. (1883), 169.

- (5.) Applications under 10 & 11 Vict. c. 96, and 12 & 13 Vict. c. 74 (the Trustee Relief Acts) in all cases where the money or securities in Court do not exceed £1,000 or £1,000 nominal value:

Trustee Relief Acts.

Cf. Cons. O. XXXV., r. 1 (3).

**PRACTICE UNDER TRUSTEE RELIEF ACTS.**—See Dan. Pr., pp. 2065—2085; Dan. Forms, pp. 884—889; Morgan, pp. 50—61.

*Title depending only on proof of age.*—In such case an order may be made on summons, though the fund exceeds £1,000: *Re Broadwood*, 55 L. T. 312.

*Adjournment to Chambers.*—A petition presented under the Trustee Relief Acts may be adjourned into Chambers: *Re Moate's Trusts*, 22 Ch. D. 635.

- (6.) Applications under 9 & 10 Vict. c. 20 (the Parliamentary Deposits Act), or any other Act relating to Parliamentary deposits for investment, payment of dividends, and payment out of Court:

Parliamentary Deposits Act.

The power to dispose at Chambers of applications under this and the next clause was first introduced in 1883. The words relating to other Acts were introduced by R. S. C., Dec., 1885, r. 20.

**PRACTICE UNDER PARLIAMENTARY DEPOSITS ACT.**—See Dan. Pr., pp. 2130—2137; Dan. Forms, pp. 898—911; Morgan, pp. 49, 50. This rule provides that applications for (*inter alia*) payment of dividends are to be disposed of at Chambers. It is to be observed, however, that the Act contains no provision for payment of dividends: see Dan. Forms, p. 899, n. (f).

*Bona fide creditors.*—In the event of the deposit becoming payable to creditors of the company, only *bona fide* or meritorious creditors, that is, such as have not directly or indirectly been promoters of the company, have a claim on the deposit: *Re Lowestoft Tramways Co.*, 6 Ch. D. 484; *Re Birmingham & Lichfield Junction Ry. Co.*, 28 Ch. D. 652. The deposit will not be applied in paying debts of the company until the other assets are exhausted: *Re Bradford Tramways Co.*, 4 Ch. D. 18.



**Order LV.  
r. 2.**

Lands Clauses  
Act.

- (7.) Applications for interim and permanent investment and for payment of dividends under the Lands Clauses Consolidation Act, 1845, and any other Act whereby the purchase-money of any property sold is directed to be paid into Court:

The original rule contained the words "passed before the 14th of August, 1855," after the words "any other Act," but they were struck out of the rule by R. S. C., Dec., 1885, r. 20.

**PRACTICE UNDER LANDS CLAUSES ACTS.**—See Dan. Pr., pp. 2137—2171; Dan. Forms, pp. 912—917; Morgan, pp. 24—48.

*Effect of Rule.*—This rule, though it affects the jurisdiction, and not merely the procedure of the Court, is not *ultra vires*, being in accordance with the power conferred by 18 & 19 Vict. c. 134, s. 16, and in fact intended to be made under the powers of that Act, as well as under those conferred by the Jud. Acts: *Ex parte Mayor of London*, 25 Ch. D. 384; Cf. S. C. Jud. Act, 1884, s. 13, ante, p. 117.

*Permanent investment.*—An application to sanction the expenditure of £7,000 in building was held not to be an application for "permanent investment," and costs of petition were allowed: *Ex parte Jesus Coll., Cam.*, 50 L. T. 583. The Court has a discretion under O. LXX., r. 1; and where an application by petition is cheaper and more expeditious than by summons, will not disallow the costs of a petition. In such case, however, the option of proceeding by petition or summons is at the applicant's risk: *Re Bethlehem Hospital*, 30 Ch. D. 541; see also *Re Stafford's Charity*, 57 L. T. 846.

Trustee Acts.

- (8.) Applications under the Trustee Acts, 1850 and 1852, in all cases where a judgment or order has been given or made for the sale, conveyance, or transfer of any stock, or of any hereditaments, corporeal or incorporeal, of any tenure or description, whatever may be the estate or interest therein:

**PRACTICE UNDER TRUSTEE ACTS.**—See Dan. Pr., pp. 2085—2130; Dan. Forms, pp. 889—898; Morgan, pp. 61—94; 1 Seton, pp. 503—549.

*Effect of Rule.*—This is taken from 15 & 16 Vict. c. 80, s. 26 (5), and C. O. XXXV., r. 1 (4), extending the provisions to the case of stock, to which they did not apply: *Frodsham v. Frodsham*, 15 Ch. D. 317. As to vesting the right to transfer stock, see *Re Tweedy*, 28 Ch. D. 529.

1 Will. IV.  
c. 65, ss. 12,  
16, and 17.

- (9.) Applications on behalf of infants under 1 Will. IV. c. 65, ss. 12, 16, and 17, where the infant is a ward of Court, or the administration of the estate of the infant or the maintenance of the infant is under the direction of the Court:

Cf. C. O. XXXV., r. 1 (5).

**PRACTICE UNDER PROPERTY LAW AMENDMENT ACT.**—See Dan. Pr., pp. 2203—2209; Dan. Forms, pp. 940—943.

*Equitable interest of infant.*—The provisions of the Act for the surrender of a lease to which an infant is entitled, apply to a lease to which the infant is only beneficially entitled, the legal estate being vested in a trustee for him: *Re Griffiths*, 29 Ch. D. 248.

18 & 19 Vict.  
c. 43.

- (10.) Applications under 18 & 19 Vict. c. 43, for the settlement of any property of any infant on marriage:

**PRACTICE UNDER INFANTS' SETTLEMENT ACT.**—See Dan. Pr., p. 1135; Dan. Forms, pp. 594, 595; Morgan, pp. 96, 97.

*Evidence.*—See r. 26, *infra*.

*Post-nuptial settlement.*—A post-nuptial settlement of an infant's property may be made with the sanction of the Court under this Act: *Re Sampson and Wall*, 25 Ch. D. 482.

*Effect of Act.*—The Act does no more than remove the disability of infancy; it does not enable a married woman, because she is also an infant, to dispose of that which an adult married woman could not dispose of, namely, a reversionary

interest in personalty. The Court has no inherent power to bind the property of a ward: *Buckmaster v. Buckmaster*, 35 Ch. D. 21.

Order LV.  
r. 2.

- (11.) Applications under the Copyhold Acts respecting any securities or money in Court. Notice of any such application is not to be given to the Copyhold Commissioners unless the Judge shall so direct:

Copyhold  
Acts.

Cf. Ch. Funds Amended Orders, 1874, r. 15; S. C. Funds Rules, 1886, rr. 30, 40, *post*, pp. 733, 737.

By s. 48 of the Settled Land Act, 1882, the Land Commissioners are substituted for the Copyhold Commissioners.

**PRACTICE UNDER COPYHOLD ACTS.**—See Dan. Pr., pp. 2212—2215; Dan. Forms, pp. 944—946.

- (12.) Applications as to the guardianship and maintenance or advancement of infants:

Guardianship,  
&c., of infants.

This is taken from 15 & 16 Vict. c. 80, s. 26 (3).

**PRACTICE AS TO INFANTS.**—See Dan. Pr., pp. 1113—1131; Dan. Forms, pp. 580—591.

*Evidence.*—See r. 25, *infra*.

*Appointment of guardian—British subject born abroad.*—As to the jurisdiction of the Court to appoint a guardian of an infant born abroad, resident abroad, and having no property in this country, see *Re Willoughby*, 30 Ch. D. 324.

*Maintenance—Jurisdiction.*—The Court has no jurisdiction on a summons in the matter of an infant to make any order compelling trustees to make payments for maintenance: *Re Lofthouse*, 29 Ch. D. 921.

*Custody of infants.*—See S. C. Jud. Act, 1873, s. 25, sub-s. 10, and notes thereto, *ante*, p. 27. See also Guardianship of Infants Act, 1886 (49 & 50 Vict. c. 27). As to the jurisdiction of the Court under s. 5 of the last-named Act, see *Re Witten*, W. N. (1887), 167. As to the effect of the Act upon the rights of a father with respect to the religious education of his children, see *Re Scanlan*, 36 W. R. 842. For the Rules under the Act, see *post*, p. 517.

- (13.) Applications connected with the management of property:

Property  
management.

This is taken from 15 & 16 Vict. c. 80, s. 26 (13).

- (14.) Applications for or relating to the sale by auction or private contract of property, and as to the manner in which the sale is to be conducted, and for payment into Court and investment of the purchase-money:

Sales.

This is taken from 15 & 16 Vict. c. 80, s. 26 (14).

It was held by Kay, J., that an application to sanction the raising of money to pay debts by mortgage of the testator's estate could not be made by originating summons: *Re Walley*, W. N. (1884), 144.

- (15.) All applications under 6 & 7 Vict. c. 73 (not being applications for orders of course) for the taxation and delivery of bills of costs and for the delivery by any solicitor of deeds, documents, and papers:

Taxation of  
solicitors' bills.

This is taken from Gen. Ord., Apr. 17, 1867.

**PRACTICE UNDER THE SOLICITORS ACTS.**—See Dan. Pr., pp. 1993—2036; Dan. Forms, pp. 867—873; Morgan, pp. 1—15; Morgan & Wurtzburg on Costs.

*Summons or petition.*—Where an application for taxation was made by petition instead of by summons, the petitioners were ordered to bear the difference between the costs of an adjourned summons and of a petition: *Re Kellock*, 35 W. R. 695.

- (16.) Applications for orders on the further consideration of any cause or matter where the order to be made is for the distribution of an insolvent estate, or for the distribution

Further con-  
sideration.



**Order LV.**  
**rr. 2, 3.**

of the estate of an intestate, or for the distribution of a fund among creditors or debenture holders :

A plaintiff will not be disallowed his costs of a further consideration in Court, where the distribution of an insolvent estate gives rise to questions of difficulty :  
*Re Barber*, 31 Ch. D. 665.

Pleadings,  
discovery, &c.

(17.) Applications for time to plead, for leave to amend pleadings, for discovery and production of documents, and generally all applications relating to the conduct of any cause or matter :

Cf. 15 & 16 Vict. c. 80, s. 26 (8)—(12).

Other matters.

(18.) Such other matters as the Judge may think fit to dispose of at Chambers.

Cf. 15 & 16 Vict. c. 80, s. 26.

**II.—Administrations and Trusts ; Foreclosure and Redemption.**

765.

Originating  
summons by  
executors,  
trustees, &c.,  
for specific  
relief without  
administra-  
tion.

**3.** The executors or administrators of a deceased person or any of them, and the trustees under any deed or instrument or any of them, and any person claiming to be interested in the relief sought as creditor, devisee, legatee, next of kin, or heir-at-law or customary heir of a deceased person, or as *cestui que trust* under the trust of any deed or instrument, or as claiming by assignment or otherwise under any such creditor or other person as aforesaid, may take out, as of course, an originating summons returnable in the Chambers of a Judge of the Chancery Division for such relief of the nature or kind following, as may by the summons be specified and as the circumstances of the case may require (that is to say), the determination, without an administration of the estate or trust, of any of the following questions or matters :—

(a.) Any question affecting the rights or interests of the person claiming to be creditor, devisee, legatee, next of kin, or heir-at-law, or *cestui que trust* :

*Creditor.*—See, as to determining on summons a disputed debt, *Re Powers*, 30 Ch. D. 291, cited *post*, p. 407.

(b.) The ascertainment of any class of creditors, legatees, devisees, next of kin, or others :

(c.) The furnishing of any particular accounts by the executors or administrators or trustees, and the vouching (when necessary) of such accounts :

(d.) The payment into Court of any money in the hands of the executors or administrators or trustees :

The Court has jurisdiction, upon an originating summons, to order payment into Court of moneys which have been received by trustees and improperly applied by them : *Re Chapman*, 54 L. T. 13.

(e.) Directing the executors or administrators or trustees to do or abstain from doing any particular act in their character as such executors or administrators or trustees :

An originating summons ought not to be taken out for the purpose of obtaining a direction to trustees to do or abstain from doing an act which is outside the scope of their trusts : *Suffolk v. Laurence*, 32 W. R. 899.

(f.) The approval of any sale, purchase, compromise, or other transaction :

Under this sub-rule the Court can only approve of a sale which the executors or trustees of the will or deed to which the originating summons relates could have made themselves : *Re Robinson*, 31 Ch. D. 247.



- (g.) The determination of any question arising in the administration of the estate or trust.

Order LV.  
rr. 3—5.

*Effect of Rule.*—This rule applies only to questions and matters which before the rule would have been determined by an action for the administration of the estate: *Re Carlyon*, 35 W. R. 155; *Re Davies*, 38 Ch. D. 210. The Court has no jurisdiction to determine questions between persons claiming under a will and persons claiming adversely to the will: *Re Bridge*, 35 W. R. 663; *Re Gladstone*, W. N. (1888), 185.

*Statement of facts.*—Originating summonses issued under this rule must, in most cases, be determined by the Judge in person: see r. 15, *infra*. It is the practice in the Chambers of Chitty, J., to require a statement of facts to be left for the use of the Judge before the summons is adjourned to him for argument. Such a statement should set out *verbatim* the clauses of the will or instrument on which the opinion of the Judge is required, and succinctly the facts leading up to the application.

*Validity of release.*—It was held that the validity of a release in respect of a share in the estate of a deceased testator can be determined on a summons under this rule, when administration of his estate is asked for, even if it is admitted that administration is not required: *Re Garnett*, 32 W. R. 474.

*Claim for re-payment by alleged residuary legatee.*—A claim by a person alleging himself to be a residuary legatee against executors, after the division of the residue amongst the supposed residuary legatees, cannot be disposed of by originating summons: *Re Warren*, W. N. (1884), 112.

*Raising money by mortgage.*—There is no power, upon originating summons, before an order has been obtained for administration, to sanction raising by mortgage of real estate an amount required to pay debts: *Re Walley*, W. N. (1884), 144.

*New trustees.*—The Court has no jurisdiction, upon an originating summons, to make an order appointing new trustees, and vesting in them the trust estate: *Re Gill*, 34 W. R. 134; but see *Re Allen*, 56 L. T. 611.

*Joint creditor.*—*Semble*, a joint creditor who desires to proceed against the separate estate of a deceased partner should do so by action and not by originating summons: *Re Barnard*, 32 Ch. D. 447.

*Costs.*—Where an action was brought, and the points in dispute might have been decided upon an originating summons, no costs of action were given: *Re Johnson*, 53 L. T. 136. The fact that the appointment of a receiver is necessary makes no difference in this respect, for a receiver can be appointed immediately after service of an administration summons, and before any order for administration has been made: *Re Francke*, 58 L. T. 305.

*Appeal.*—An originating summons under this rule, being an “action” within S. C. Jud. Act, 1873, s. 100, an order made upon such a summons is appealable at any time within one year from its date: *Re Fawcitt*, 30 Ch. D. 231.

4. Any of the persons named in the last preceding Rule may in like manner apply for and obtain an order for—

766.

Summons and order for administration.

- (a.) The administration of the personal estate of the deceased:
- (b.) The administration of the real estate of the deceased:
- (c.) The administration of the trust.

This rule is an extension of 15 & 16 Vict. c. 86, ss. 45—47, which did not relate to the administration of trusts.

5. The persons to be served with the summons under the last two preceding Rules in the first instance shall be the following; (that is to say,)

767.

Persons to be served with originating summons.

A. Where the summons is taken out by an executor or administrator or trustee,—

- (a.) For the determination of any question, under sub-sections (a.), (e.), (f.), or (g.), of Rule 3, the persons, or one of

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rr. 5, 5a.

- the persons, whose rights or interests are sought to be affected :
- (b.) For the determination of any question under sub-section (b.) of Rule 3, any member or alleged member of the class :
  - (c.) For the determination of any question under sub-section (c.) of Rule 3, any person interested in taking such accounts :
  - (d.) For the determination of any question under sub-section (d.) of Rule 3, any person interested in such money :
  - (e.) For relief under sub-section (a.) of Rule 4, the residuary legatees, or next of kin, or some of them :
  - (f.) For relief under sub-section (b.) of Rule 4, the residuary devisees, or heirs, or some of them :
  - (g.) For relief under sub-section (c.) of Rule 4, the *cestuis que trust*, or some of them :
  - (h.) If there are more than one executor, or administrator, or trustee, and they do not all concur in taking out the summons, those who do not concur :

B. Where the summons is taken out by any person other than the executors, administrators, or trustees, the said executors, administrators, or trustees.

The provisions of O. XIII., r. 1, *ante*, p. 162, apply to an originating summons: *Re Pepper*, 32 W. R. 765.

*Absent party out of jurisdiction.*—Where one of the parties interested in an estate of great magnitude who had not been made a party to the summons was out of the jurisdiction, the Court declined to make an order on the summons, but directed a writ to be issued, and gave leave to serve such writ out of the jurisdiction with a notice of motion, the evidence on the summons to be used on the motion: *Re Bullen-Smith*, 57 L. T. 924.

Mortgagee,  
&c., may take  
out originating  
summons.

5A. Any mortgagee or mortgagor, whether legal or equitable, or any person entitled to or having property subject to a legal or equitable charge, or any person having the right to foreclose or redeem any mortgage, whether legal or equitable, may take out as of course an originating summons, returnable in the Chambers of a Judge of the Chancery Division, for such relief of the nature or kind following as may by the summons be specified, and as the circumstances of the case may require; that is to say,

Sale, foreclosure, delivery of possession by the mortgagor, redemption, reconveyance, delivery of possession by the mortgagee.

This and the next succeeding rule are rr. 21 and 22 of R. S. C., Dec., 1885.

*Action or summons.*—Where a plaintiff commenced an action for foreclosure instead of applying by summons under this rule, North, J., refused to allow him larger costs than would have been obtained on a summons: *O'Kelly v. Culverhouse*, W. N. (1887), 36; see also *Barr v. Harding*, 36 W. R. 216. Where in a foreclosure action immediate payment was claimed in addition to the ordinary relief, and the Judge refused to make the order, Kay, J., refused to limit the costs to such as could have been obtained on summons: *Brooking v. Skewis*, 36 W. R. 215. The mere fact that a receiver is asked for is not sufficient reason for proceeding by action instead of summons: *Gee v. Bell*, 35 Ch. D. 160. Since this rule came into operation, it is not the practice of Chitty, J., to make orders for foreclosure under O. XV., r. 1: see *Bissett v. Jones*, 32 Ch. D. 635.

*Appointment of receiver.*—Where proceedings for foreclosure have been instituted under this rule, an order can be obtained for the appointment of a receiver: *Weston v. Levy*, W. N. (1887), 76; *Gee v. Bell*, 35 Ch. D. 160. In *Sneed v.*



*Cumberland*, 31 Sol. J. 659, leave was given to serve notice of motion for a receiver with the originating summons; but, *semble*, a receiver can be appointed on a summons issued under this rule: *Barr v. Harding*, 36 W. R. 216.

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rr. 5a—10.

*Delivery of possession.*—A mortgagee who has obtained a foreclosure judgment *nisi* by originating summons under this rule, may, upon default in payment by the mortgagor, obtain an order for possession of the mortgaged premises, even though the summons did not expressly ask for possession: *Best v. Applegate*, 37 Ch. D. 42. But, having regard to *Williamson v. Burrage*, 56 L. T. 702 (cited *ante*, p. 201), it would seem that the order *nisi* should contain a provision for delivery by the mortgagor of possession in default of redemption, otherwise the order for delivery of possession cannot be obtained without notice to the mortgagor. Delivery of possession can be ordered even after an order for foreclosure absolute: *Keith v. Day*, W. N. (1888), 194.

5b. The persons to be served with the summons under the last preceding Rule shall be such persons as under the existing practice of the Chancery Division would be the proper defendants to an action for the like relief as that specified by the summons.

Persons to be served.

*Adding parties.*—An originating summons issued under r. 5a cannot be amended by adding parties after an order has been made directing accounts and a sale of the mortgaged property: *Gwatkin v. Dowling*, W. N. (1887), 208.

6. The Court or a Judge may direct such other persons to be served with the summons as they or he may think fit.

768.

Service on other persons.

7. The application shall be supported by such evidence as the Court or a Judge may require, and directions may be given as they or he may think just for the trial of any questions arising thereout.

769.

Evidence and trial of questions.

As to right to cross-examine on affidavits in support of a summons for administration, see *Re Wilson*, 54 L. J., Ch. 487.

8. It shall be lawful for the Court or a Judge upon such summons to pronounce such judgment as the nature of the case may require.

770.

Judgment.

9. The Court or a Judge may give any special directions touching the carriage or execution of the judgment, or the service thereof, upon persons not parties, as they or he may think just.

771.

Special directions.

10. It shall not be obligatory on the Court or a Judge to pronounce or make a judgment or order, whether on summons or otherwise, for the administration of any trust or of the estate of any deceased person, if the questions between the parties can be properly determined without such judgment or order.

772.

Decision without judgment.

*Object of Rule.*—A party interested in the estate of a deceased person, even though that party be an infant, is not entitled, as of course, to an administration judgment at the expense of the estate. He is only entitled to an administration judgment where there are questions which cannot properly be determined except by an administration action; but the Court has power under this rule to order a limited administration only, that is, to direct particular accounts and inquiries, if it sees that the question can thus be properly determined, the object of the rule being to prevent general administration except in cases of necessity; and the Court, in the exercise of its discretion as to costs under O. LXV., r. 1, will order the plaintiff to pay the costs of any unnecessary or improper administration proceedings: *Re Blake*, 29 Ch. D. 913; see also *Re Wilson*, 28 Ch. D. 457; *Re Gyon*, 29 Ch. D. 834.

*Application by creditors.*—A creditor is entitled to have a question of law as to his claim disposed of by summons, where there is no dispute as to the facts: *Re Powers*, 30 Ch. D. 291. *Per Cotton, L. J.*, at p. 296: "It is not a right course to take out an administration summons to obtain payment of a disputed debt, but when the question depends merely on a point of law it ought to be decided without putting the parties to another proceeding." *Per Lindley, L. J.*: "A summons is not the proper way of trying a disputed debt where the dispute



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rr. 10a—12.**

turns on questions of fact, but where there is no dispute of fact the validity of the debt can be decided just as well on a summons as in an action." Whether a judgment short of general administration will bind creditors, *quære*: *Re Mills*, W. N. (1884), 21.

*Discretion.*—The Judge will exercise his discretion in each case. Where assets were very small an order was refused: *Re Jennings*, 28 Sol. J. 477. In a proper case an order for general administration will be made: *Re Dickinson*, W. N. (1884), 199. See also *Re Barrett*, W. N. (1884), 224; *Re Hayter*, 32 W. R. 26. A direction by a testator that his executors shall take proceedings to have his estate administered by the Court does not deprive the Court of its discretion to refuse to make an order for administration: *Re Stocken*, 38 Ch. D. 319.

*Questions at issue in an action.*—This rule applies only to an originating summons under r. 3. The Court will not make an order under this rule on a summons taken out in an action where the point raised upon the summons is one which should properly be determined at the trial of the action: *Borthwick v. Ransford*, 28 Ch. D. 79.

Additional powers of Court where insufficient accounts rendered.

**10A.** Upon an application for administration or execution of trusts by a creditor or beneficiary under a will, intestacy, or deed of trust, where no accounts or insufficient accounts have been rendered, the Court or a Judge may, in addition to the powers already existing,—

(a.) Order that the application shall stand over for a certain time, and that the executors, administrators, or trustees in the meantime shall render to the applicant a proper statement of their accounts, with an intimation that if this is not done they may be made to pay the costs of the proceedings:

(b.) When necessary, to prevent proceedings by other creditors, make the usual judgment or order for administration, with a proviso that no proceedings are to be taken under such judgment or order without leave of the Judge in person.

The above is r. 23 of R. S. C., Dec. 1885.

773.

Subsequent summonses, how marked.

**11.** When any summons under Rules 3 or 4 of this Order has been taken out, every subsequent summons relating to the same estate or trust shall be marked with the name of the Judge, to whom, for the time being, the matter is assigned, and in case any such subsequent summons shall be marked with the name of another Judge it shall be the duty of the executors, administrators, or trustees, to apply for the transfer to such first-mentioned Judge of such subsequent summons.

See O. XLIX., r. 6, *ante*, p. 370.

774.

Saving for control of trustees, &c.

**12.** The issue of a summons under Rule 3 of this Order shall not interfere with or control any power or discretion vested in any executor, administrator, or trustee, except so far as such interference or control may necessarily be involved in the particular relief sought.

*Discretion of trustees, &c.*—As to the jurisdiction of the Court to control the discretion of trustees in a suit for the execution of the trusts, see *Tempest v. Camoys*, 21 Ch. D. 571, 576, n.; *Bethell v. Abraham*, 17 Eq. 24. A decree for administration does not take away from the donee of a power to appoint new trustees the right to exercise the power, though he can only exercise it subject to the supervision of the Court: *Re Gadd*, 23 Ch. D. 134; *Re Hall*, 54 L. J., Ch. 527. As to exercise by trustees of their powers under the will of their testator, without sanction of the Court, after hearing on further consideration, see *Re Mansel*, 54 L. J., Ch. 883.

**13.** Any application to a Judge in Chambers under "The Charitable Trusts Act, 1853," section 28, shall be made by summons. **Order LV.  
rr. 13—15.**

775.

This rule is taken from C. O. XLI., r. 10.

The Act only applies where a charitable trust exists, and gives no jurisdiction to decide on summons whether this is so or not: *Re Norwich Town Close Estate*, 36 W. R. 853. Applications under Charitable Trusts Act.

**14.** No order made under the Act in the last preceding rule mentioned by the Judge in Chambers shall be subject to appeal where the gross annual income of the charity has not been declared by the Charity Commissioners for England and Wales to exceed £100, unless the Judge by whom such order may have been made shall certify that such appeal ought to be permitted either absolutely or on such terms as the Judge may think fit to impose. 776.  
Limit to appeals in Charity cases.

This rule is taken from C. O. XLI., r. 13. As to proceedings under the Charitable Trusts Acts, see Dan. Pr., pp. 2047—2060: Dan. Forms, pp. 879—881: Morgan, pp. 94, 95. As to fees and costs in such proceedings, see O. LXV., rr. 24, 25, post, p. 487.

### III.—Powers and Duties of Chief Clerks.

**15.** The Judges of the Chancery Division to whom Chambers are attached shall have power, subject to these Rules, to order what matters shall be heard and investigated by their Chief Clerks, either with or without their direction, during their progress; and what matters shall be heard and investigated by themselves, and particularly if the Judge shall so direct, his Chief Clerks shall take such accounts and make such inquiries as have usually been taken and made by the Chief Clerks, and the Judge shall give such aid and directions in every such account or inquiry as he may think fit, but subject to the right hereinafter provided for the parties to bring any particular point before the Judge: provided, that no order for general administration or for the execution of a trust, or for accounts or inquiries concerning the property of a deceased person, or other property held upon any trust, or the parties entitled thereto, shall be made except by the Judge in person: provided also that summonses under Rule 3 of this Order, the object of which is to obtain the opinion of the Court or a Judge upon the construction of a document or any question of law, and any application for the appointment of a provisional liquidator, and applications for substituted service and for service out of the jurisdiction, shall be brought before the Judge in person. 777.  
Power to Judges to direct what matters shall be heard by themselves and what by their chief clerks.  
  
Matters required to be disposed of by the Judge in person.

Cf. 15 & 16 Vict. c. 80, s. 29.

The proviso was substituted for the old proviso by r. 24 of R. S. C., Dec., 1885.

*Right to bring particular point before Judge.*—See r. 69, *infra*; *Hayneard v. Hayneard*, Kay, App. xxxi.; *Re Rigg*, 10 W. R. 365; *Saunders v. Walter*, 9 Hare, App. v.; *Re London and County Assurance Co.*, 5 W. R. 794; *Upton v. Brown*, 20 Ch. D. 731; *Re Watts*, 22 Ch. D. 5; Dan. Pr., p. 961.

**ADJOURNMENT TO JUDGE.**—The following rule as to adjournments from the Chief Clerk to the Judge was laid down by Pearson, J. The rule is followed in the Chambers of Chitty, J., and it is believed that it also obtains in the Chambers of the other Judges of the Chancery Division:—An adjournment to the Judge will not be granted unless an application is made to the Chief Clerk at the time when the summons is heard by him, either for an adjournment or for time to consider whether an adjournment shall be asked for. If no application is made to the Chief Clerk at the time, the order can only be altered by means of a motion



**Order LV.  
rr. 15—18.**

in Court to discharge it. If an order is made against a party properly served in his absence, the result is the same as if, being present, he does not ask for an adjournment. Time to consider whether an adjournment shall be asked for will be granted if an application for it is made at the hearing in a proper case, as if only a clerk who is not fully instructed is present, or in a country case when reference to the country solicitor is necessary: *W. N.* (1884), 218.

*Affidavits filed after hearing by Chief Clerk.*—See *Re Chifferiel*, 36 *W. R.* 806.

778.  
Incidental  
powers of  
chief clerks.

**16.** Each Chief Clerk shall, for the purpose of any proceedings directed to be taken before him, have full power to issue advertisements, to summon parties and witnesses, to administer oaths, to require the production of documents, to take affidavits and acknowledgments other than acknowledgments by married women, and when so directed by the Judge to examine parties and witnesses either upon interrogatories or *viva voce*, as the Judge shall direct.

This rule is taken from 15 & 16 *Vict. c.* 80, s. 30.

*Evidence in Chambers.*—See *O. XXXVIII.*, rr. 20—24, *ante*, p. 326; *Dan. Pr.*, pp. 975—982; *Dan. Forms*, pp. 441—452; *Morgan*, pp. 492, 493.

779.  
Attendance of  
parties and  
witnesses be-  
fore chief  
clerks.

**17.** Parties and witnesses summoned to attend before a Chief Clerk shall be bound to attend in pursuance of the summons, and shall be liable to process of contempt in like manner as parties or witnesses are liable thereto in case of disobedience to any order of the Court, or in case of default in attendance, in pursuance of any order of the Court or of any writ of *subpœna ad testificandum*, and all persons swearing or affirming before any Chief Clerk shall be liable to all such penalties, punishments, and consequences for any wilful and corrupt false swearing or affirming contained therein, as if the matters sworn or affirmed had been sworn and affirmed before any other person by law authorized to administer oaths, to take affidavits, and to receive affirmations.

This rule is taken from 15 & 16 *Vict. c.* 80, s. 31.

*Summoning witness.*—Any party may, without leave of the Court, issue a subpoena for the examination of a witness at any stage of an action. In an action for redemption, after judgment, it was held that plaintiff was entitled to issue a subpoena and examine a witness with respect to moneys received by him: *Raymond v. Tapson*, 22 *Ch. D.* 430. As to summoning by subpoena a person able to give information about the assets of an estate under administration, see *Venables v. Schweitzer*, 16 *Eq.* 76. Before a person disobeying a Chief Clerk's summons can be attached, an order should be obtained under *O. XXXVII.*, r. 13, *ante*, p. 312: *Powell v. Nevitt*, 55 *L. T.* 728.

Power of one  
chief clerk to  
take business  
of another.

**17A.** Any Chief Clerk shall have power without any transfer of the cause or matter to take any business of any other Chief Clerk, unless the Judge to whose Chambers any such Chief Clerk may be for the time being attached shall otherwise direct.

The above is r. 25 of *R. S. C.*, Dec., 1885.

780.  
Computation  
of interest,  
&c.

**18.** The Court or Judge may direct any computation of interest, or the apportionment of any fund, to be certified by the Chief Clerk, and to be acted upon by the Paymaster-General or other person without further order.

*Cf. C. O. XXXV.*, r. 45.

Computation of interest on money orders is provided for by rr. 13 *et seq.* of the Supreme Court Funds Rules, 1886, *post*, pp. 729 *et seq.*



IV.—*Assistance of Experts.*

Order LV.  
rr. 19, 20.

19. The Judge in Chambers may, in such way as he thinks fit, obtain the assistance of accountants, merchants, engineers, actuaries, and other scientific persons the better to enable any matter at once to be determined, and he may act upon the certificate of any such person.

This rule is taken from 15 & 16 Vict. c. 80, s. 42.

*Effect of Rule.*—See *Mildmay v. Id. Methuen*, 1 Drew. 216; *A.-G. v. Colney Hatch Asylum*, 4 Ch. 146; *Stokes v. City Offices Co.*, 13 W. R. 537; *Morgan*, p. 494.

*Report of expert.*—"The report of an expert to whom a reference is made under the above rule, though entitled to great weight as affording independent testimony, cannot be considered as an award, or in any other light than as furnishing materials for the information and guidance of the Court; and evidence in opposition to such expert may be received: *Ford v. Tynte*, 2 De G., J. & S. 127. The Court has no power to delegate to such an expert the power of calling witnesses, or administering an oath: *Morris v. Llanelly Ry. Co.*, W. N. (1868), 46. It is irregular for the Chief Clerk to refer all the questions in the suit to an accountant, and to adopt his report as part of the certificate: *Hill v. King*, 3 De G., J. & S. 418; "Dan. Pr., p. 964.

*Accountant.*—If an account is referred to an accountant, and the accounts have to be certified, the fees applicable to the case under Order as to S. C. Fees, 1884, are still payable: *Hutchinson v. Norwood*, 32 W. R. 392.

V.—*Summonses in Chambers.*

20. An originating summons shall be in the Form No. 25 in Appendix L, with such variations as circumstances may require. It shall be prepared by the applicant or his solicitor, and shall be sealed in the Central Office, and when so sealed shall be deemed to be issued. The person obtaining the summons shall leave at the Central Office a copy thereof, which shall be filed and stamped in the manner required by law.

Cf. C. O. XXXV., r. 5. For form referred to, see *post*, p. 650.

*Definition of originating summons.*—See O. LXXI., r. 1, *post*, p. 514. An originating summons is an "action" within S. C. Jud. Act, 1873, s. 100: *Re Faucett*, 30 Ch. D. 231; *Re Vardon's Trusts*, 55 L. J., Ch. 259.

*Service of originating summons.*—See O. LIV., r. 4, *ante*, p. 394. An originating summons cannot be served out of the jurisdiction: *Re Busfield*, 32 Ch. D. 123.

*Liverpool and Manchester Registries.*—Originating summonses may be sealed and issued in the district registries of Liverpool and Manchester respectively: R. S. C., May, 1887, r. 1, *post*, p. 516.

The following notice, relating to originating summonses in the Chancery Division, was issued in Jan. 1884:—

NOTICE.

CHANCERY DIVISION.

*Titles, &c., of Summonses issued out of the Central Office.*

SOLICITORS issuing originating summonses are recommended to use the following Forms as far as practicable for general use in Chambers. But the officers of this Department cannot be responsible for any alterations which may be required by the Chief Clerk in any particular case.

*Administration Summonses*

Are to be entitled

"In the matter of the estate of A. B., deceased."

C—D . . . . . Plaintiff.  
E—F . . . . . Defendant.

N.B.—This Regulation is to apply to summonses under Order 55, Rule III., for determining particular questions with regard to an estate.

781.  
Experts.

782.  
Preparation,  
form, and issue  
of originating  
summons.

**Order LV.**  
**rr. 20—23.**

*Originating Summonses.*

In all cases where an originating summons is taken out under the authority of an Act of Parliament, or the Rules of the Supreme Court, the summons must be entitled in a substantial matter (*as the first title*) and also in the matter of the particular Act, as well as any general Act applicable (such as the Lands Clauses Consolidation Act, 1845, or the Copyhold Acts).

- (1.) If it be a Railway or other Local Act, and under its powers a portion of the estate of any testator or intestate has been taken, the summons must be entitled in the matter of the estate of such testator or intestate.

And in the matter of the Act or Acts.

- (2.) If property settled by any deed of settlement then in the matter of such settlement.

And in the matter of the Act or Acts.

- (3.) If land belonging to a rector, vicar, or corporate body, then it must be entitled "*Ex parte* the rector, vicar, or corporate body," as the case may be.

And in the matter of the Act or Acts.

- (4.) Summonses for payment of money out of Court should bear the same title as that of the proceeding under which the fund was paid in.

- (5.) Summonses under the Settled Land Act, 1882, should be entitled as directed by the Rules under the said Act, and in other respects should be in the form given in Appendix L, No. 25 of the Rules of the Supreme Court, 1883.

The address and description of the applicant and of the next friend (if any), should in all cases be stated in the summons, and if the applicant or the parties summoned apply or are summoned as trustees or in a representative capacity the fact should appear in the summons, and the rule (if any) under which the application is made should be stated therein.

See also Notice issued from Central Office, *post*, p. 713.

783.

Insertion of  
time for at-  
tendance.

**21.** The day and hour for attendance under an originating summons shall be left to be added, after the sealing thereof, in the margin or at the foot of the same, and shall be there inserted when such day and hour shall have been fixed at the Chambers of the Judge to whom the matter is assigned by the Chief Clerk, who shall mark the summons with the seal used in such Chambers.

784.

Proceedings if  
summons not  
served in time.

**22.** Where from any cause an originating summons may not have been served upon any party *seven clear days* before the return thereof, an indorsement may be made upon the summons, and upon a copy thereof stamped for service appointing a new time for the parties not before served to attend at the Chambers of the Judge, and such indorsements shall be sealed at the Judge's Chambers, and the service of the copy so indorsed and sealed shall have the same force and effect as the service of an originating summons, and where any party has been served before such indorsement, the hearing thereof may, upon the return of the summons, be adjourned to the new time so appointed.

This rule is taken from C. O. XXXV., r. 8.

785.

Appearance to  
summons.

**23.** The parties served with an originating summons shall, before they are heard in Chambers, enter appearances in the Central Office and give notice thereof.

This rule is taken from C. O. XXXV., r. 9.

*Liverpool and Manchester Registries.*—Appearances must be entered in the Liverpool and Manchester District Registries to originating summonses sealed and issued in those registries: R. S. C., May, 1887, r. 1, *post*, p. 516.

24. The summons by the Chief Clerk requiring the attendance of parties, witnesses, or others, shall be in the Form No. 1 in Appendix L, with such variations as the circumstances of the case may require.

For form referred to, see *post*, p. 632.

Order LV.  
rr. 24—28.

786.

Form of  
summons by  
chief clerk.

VI.—*Proceedings relating to Infants.*

25. Upon applications for the appointment of guardians of infants and allowance for maintenance the evidence shall show—

- (a) The ages of the infants;
- (b) The nature and amount of the infants' fortunes and incomes;
- (c) What relations the infants have.

787.

Evidence on  
applications  
for appoint-  
ment of  
guardians.

This rule is taken from Chan. Reg., Aug. 8, 1857, r. 19. See rule 2 (12) of this Order, and notes thereto, *supra*.

26. Upon applications to obtain the sanction of the Court to infants making settlements on marriage under 18 & 19 Vict. c. 43, evidence shall be produced to show—

- (a) The age of the infant;
- (b) Whether the infant has any parents or guardians;
- (c) With whom or under whose care the infant is living, and, if the infant has no parents or guardians, what near relations the infant has;
- (d) The rank and position in life of the infant and parents;
- (e) What the infant's property and fortune consist of;
- (f) The age, rank, and position in life of the person to whom the infant is about to be married;
- (g) What property, fortune, and income such person has;
- (h) The fitness of the proposed trustees, and their consent to act;

The proposals for the settlement of the property of the infant, and of the person to whom such infant is proposed to be married, shall be submitted to the Judge.

788.

Evidence on  
applications  
as to infants'  
settlements.

This rule is taken from Chan. Reg., Aug. 8, 1857, r. 20. See rule 2 (10) of this Order, *supra*. For the Act, see Morgan, p. 96.

27. At any time during the proceedings at any Judge's Chambers under any judgment or order, the Judge may, if he shall think fit, require a guardian *ad litem* to be appointed for any infant or person of unsound mind not so found by inquisition, who has been served with notice of such judgment or order.

789.

Appointment  
of guardian *ad  
litem*.

This rule is taken from C. O. VII., r. 7. Compare O. XVI., rr. 18—20, *ante*, pp. 182, 183.

VII.—*Documents to be left at Chambers.*

28. In all cases of proceedings in Chambers under any judgment or order, the party prosecuting the same shall leave a copy of such judgment or order at the Judge's Chambers, and shall certify the same to be a true copy of the judgment or order as passed and entered.

790.

Copy of judg-  
ment.

This rule is taken from C. O. XXXV., r. 15.

Passing and entering judgments and orders.—See O. LXII., *post*, p. 461.



**Order I.V.  
rr. 29—33.**

791.

Registrar's  
note on ad-  
journalment to  
or from  
Chambers.

**29.** Whenever any matter is adjourned from the Court to Chambers, or any directions are given in Court to be acted upon at Chambers, whether upon a matter adjourned into Court from Chambers, or upon any other occasion, without an order being drawn up, a note signed by the Registrar, stating for what purpose such matter is adjourned to Chambers, or the directions given, shall be procured from the Registrar and left at Chambers.

This rule is taken from Chan. Reg., Aug. 8, 1857, r. 3.

792.

Note of names  
of solicitors.

**30.** A note stating the names of the solicitors for all the parties, and showing for which of the parties such solicitors are concerned, shall be left at Chambers with every judgment or order.

This rule is taken from Chan. Reg., Aug. 8, 1857, r. 6.

793.

Copies of  
certificates.

**31.** A copy of every certificate of the Central Office of entry of a memorandum of service of notice of a judgment or order, and of every appearance entered by a person served with such notice to attend the proceedings, certified by the solicitor, shall be left at Chambers.

This rule is taken from Chan. Reg., Aug. 8, 1857, r. 8.

*Memorandum of service of notice of judgment.*—See O. XVI., r. 42, *ante*, p. 187.

*Appearance.*—See O. XVI., r. 41, *ante*, p. 187.

VIII.—*Summonses to proceed.*

794.

Time for  
bringing in  
judgment  
directing  
accounts.

**32.** Every judgment or order directing accounts or inquiries to be taken or made shall be brought into the Judge's Chambers by the party entitled to prosecute the same within *ten days* after the same shall have been passed and entered, and in default thereof any other party to the cause or matter shall be at liberty to bring in the same, and such party shall have the prosecution of such judgment or order unless the Judge shall otherwise direct.

This rule is taken from C. O. XXXV., r. 22.

*Accounts and inquiries.*—See O. XXXIII., *ante*, p. 272.

795.

Summonses to  
proceed on  
accounts and  
inquiries.  
Directions.

**33.** Upon a copy of the judgment or order being left, a summons shall be issued to proceed with the accounts or inquiries directed, and upon the return of such summons the Judge, if satisfied by proper evidence that all necessary parties have been served with notice of the judgment or order, shall thereupon give directions as to the manner in which each of the accounts and inquiries is to be prosecuted, the evidence to be adduced in support thereof, the parties who are to attend on the several accounts and inquiries, and the time within which each proceeding is to be taken, and a day or days may be appointed for the further attendance of the parties, and all such directions may afterwards be varied, by addition thereto or otherwise, as may be found necessary.

This rule is taken from C. O. XXXV., r. 16.

*Service of notice of judgment.*—See O. XVI., rr. 40—44, *ante*, pp. 186, 187.

*Special directions as to taking account.*—See O. XXXIII., r. 3, *ante*, p. 272.

*Right of defendants to insist on account being brought in.*—Where mortgagees had obtained a judgment directing accounts to be taken, and they subsequently refused to bring in the accounts, alleging that the security was insufficient, and that the taking of the accounts would be a useless expense, it was held that they were bound to bring in the accounts, without prejudice to any application they might make to stay proceedings. *Seemle*, that if the taking of the accounts turned out to be a reckless expense, the defendant might be ordered to pay the costs of it: *Taylor v. Mostyn*, 25 Ch. D. 48.

*Stay of proceedings—Insufficiency of assets.*—Where a judgment directed accounts and inquiries to be taken, upon an application by the plaintiff to stay the further taking of such accounts and inquiries, and upon evidence that the amount due to the plaintiffs exceeded the value of the property, the accounts were ordered to be stayed unless defendants gave security for costs: *Exchange and Hop Warehouses v. Land Financiers' Association*, 34 Ch. D. 195.

*Conduct of proceedings.*—In an action by trustees against beneficiaries, where all parties except one defendant were represented by the same solicitor, conduct was given to the defendant who was separately represented: *Allen v. Norris*, W. N. (1884), 118.

**34.** Where by a judgment or order a deed is directed to be settled by the Judge in Chambers in case the parties differ, a summons to proceed shall be issued, and upon the return of the summons the party entitled to prepare the draft deed shall be directed to deliver a copy thereof, within such time as the Judge shall think fit, to the party entitled to object thereto, and the party so entitled to object shall be directed to deliver to the other party a statement in writing of his objections (if any) within *eight days* after the delivery of such copy, and the proceeding shall be adjourned until after the expiration of the said period of eight days.

This rule is taken from C. O. XXXV., r. 17.

*Conveyancing Counsel.*—See O. LI., Part II., ante, p. 385; and O. LXV., r. 22 (costs), post, p. 487.

*"In case the parties differ."*—These words should be omitted from the order, if an infant or party under disability is a necessary party to the deed: *Culvert v. Godfrey*, 2 Beav. 267; Dan. Pr., p. 1069.

*Appeal.*—The order of a Judge settling the form of a conveyance is subject to appeal: *Pollock v. Rabbits*, 21 Ch. D. 466.

**35.** Where, upon the hearing of the summons to proceed, it appears to the Judge that by reason of absence, or for any other sufficient cause, the service of notice of the judgment or order upon any party cannot be made or ought to be dispensed with, the Judge may, if he shall think fit, wholly dispense with such service, or may at his discretion order any substituted service or notice by advertisement or otherwise in lieu of such service.

This rule is taken from C. O. XXXV., r. 18. Compare O. LXVII., r. 6, post, p. 507.

*Practice.*—As to service of notice of judgment, see Dan. Pr., pp. 275—282; Dan. Forms, pp. 74—84.

*Necessity for service.*—Persons interested in an estate under administration in an action to which they have not been made parties, and whose rights and interests may be affected by an order directing accounts and inquiries, are not bound by the proceedings under the order, at any rate where they ought to be served, unless they are served with notice of the judgment, or an order has been made appointing some member of their class to represent them: *May v. Newton* 34 Ch. D. 347.

Order LV.  
rr. 33—35.

796.  
Summons to proceed on settlement of deed.

797.  
Power to dispense with service of notice of judgment.



**Order LV.  
rr. 36—40.**

798.

Proceedings  
which may be  
taken before  
necessary parties  
are served  
and bound.

**36.** If on the hearing of the summons to proceed it shall appear that all necessary parties are not parties to the action or have not been served with notice of the judgment or order, directions may be given for advertisement for creditors, and for leaving the accounts in Chambers, but the adjudication on creditors' claims and the accounts are not to be proceeded with, and no other proceeding is to be taken, except for the purpose of ascertaining the parties to be served, until all necessary parties shall have been served, and are bound, or service shall have been dispensed with, and until directions shall have been given as to the parties who are to attend on the proceedings.

799.

Course of proceedings  
on summons.

**37.** The course of proceeding in Chambers shall ordinarily be the same as the course of proceeding in Court upon motions. Copies, abstracts, or extracts of or from accounts, deeds, or other documents and pedigrees and concise statements shall, if directed, be supplied for the use of the Judge and his Chief Clerks, and where so directed, copies shall be handed over to the other parties. But no copies shall be made of deeds or documents where the originals can be brought in, unless the Judge shall otherwise direct.

This rule is taken from C. O. XXXV., r. 26.

*IX.—Summons Book.*

800.

Summons  
book.

**38.** At the time any summons is obtained, an entry thereof shall be made in "the Summons Book," stating the date on which the summons is issued, the name of the cause or matter, and by what party, and shortly for what purpose such summons is obtained, and at what time such summons is returnable.

This rule is taken from C. O. XXXV., r. 24.

801.

Lists for the  
day.

**39.** Lists of matters appointed for each day shall be made out and affixed outside the doors of the Chambers of the respective Judges; and, subject to any special direction, such matters shall be heard in the order in which they appear in such lists.

This rule is taken from C. O. XXXV., r. 25.

Chief clerks'  
lists.

**39A.** Matters coming before the Chief Clerks shall, unless the Judge otherwise directs, when ready for hearing be entered in daily lists and taken in their order on such lists; and every matter commenced shall be continued until completion, subject to such adjournments as the Chief Clerk shall for good cause, and upon such terms as to costs or otherwise as he shall think fit, consider necessary.

The above is r. 26 of R. S. C., Dec., 1885.

*X.—Attendances.*

802.

Directions as  
to attendances.

**40.** Where, upon the hearing of the summons to proceed, or at any time during the prosecution of the judgment or order, it appears to the Judge, with respect to the whole or any portion of the proceedings, that the interests of the parties can be classified,



he may require the parties constituting each or any class to be represented by the same solicitor, and may direct what parties may attend all or any part of the proceedings; and where the parties constituting any class cannot agree upon the solicitor to represent them, the Judge may nominate such solicitor for the purpose of the proceedings before him, and where any one of the parties constituting such class declines to authorize the solicitor so nominated to act for him, and insists upon being represented by a different solicitor, such party shall personally pay the costs of his own solicitor of and relating to the proceedings before the Judge, with respect to which such nomination shall have been made, and all such further costs as shall be occasioned to any of the parties by his being represented by a different solicitor from the solicitor so to be nominated.

Order LV.  
rr. 40—43.

This rule is taken from C. O. XXXV., r. 20. For form of summons for an order for classification of parties, see Dan. Forms, p. 466. For forms of order nominating solicitors to represent the parties, see 1 Seton, p. 636, No. 3; 2 Seton, p. 643, No. 5.

*Nomination of solicitor.*—The official solicitor was appointed to represent a class, where several residuary legatees appeared by separate solicitors, and could not agree upon one solicitor to represent them: *Re Docuera*, W. N. (1884), 232.

*Costs.*—As to the costs of parties attending the proceedings, see Dan. Pr., pp. 280, 281. One set of costs only will as a rule be allowed amongst persons in the same interest, who appear separately: *Stevenson v. Abington*, 11 W. R. 936; *Daubney v. Leake*, 1 Eq. 495; *Hubbard v. Latham*, 14 W. R. 553; Dan. Pr., p. 281, n. (m). Mere liberty to attend the proceedings does not entitle the parties having liberty to the costs of their attendance in chambers as a matter of course. In order to entitle such parties to such costs the order giving the liberty to attend should expressly provide that they are to be entitled thereto: *Day v. Batty*, 21 Ch. D. 830. And a person who has not obtained the special leave of the Judge may be ordered to pay, in addition to his own costs, any extra costs occasioned by his attendance: *Sharp v. Lush*, 10 Ch. D. 468. See further O. LXV., r. 27 (23), *post*, p. 493; *Morgan & Wurtzburg*, p. 137.

41. Whenever in any proceeding before a Judge in Chambers the same solicitor is employed for two or more parties, such Judge may at his discretion require that any of the said parties shall be represented before him by a distinct solicitor, and adjourn such proceedings until such party is so represented.

803.

Representation of party by distinct solicitor.

This rule is taken from C. O. XXXV., r. 21.

42. Any of the parties other than those who shall have been directed to attend may attend at their own expense, and upon paying the costs, if any, occasioned by such attendance, or, if they think fit, they may apply by summons for liberty to attend at the expense of the estate, or to have the conduct of the action either in addition to or in substitution for any of the parties who shall have been directed to attend.

804.

Attendance of parties not directed to attend.

This rule was introduced in 1883.

43. An order is to be drawn up on a summons to be taken out by the plaintiff or the party having the conduct of the action, stating the parties who shall have been directed to attend and such of them (if any) as shall have elected to attend at their own

805.

Order.

**Order LV.  
rr. 43—46.**

expense, and such order is to be recited in the Chief Clerk's Certificate.

This rule was introduced in 1883. For form of summons under this rule, see *Dan. Forms*, p. 466, and n. (n).

**XI.—Advertisements for Creditors and Claimants.**

806.

Exclusion of persons not claiming within time specified by advertisement.

**44.** Where a judgment or order is given or made, whether in Court or in Chambers, directing an account of debts, claims, or liabilities, or an inquiry for heirs, next of kin, or other unascertained persons, unless otherwise ordered, all persons who do not come in and prove their claims within the time, which may be fixed for that purpose by advertisement, shall be excluded from the benefit of the judgment or order.

This rule is taken from C. O. XXXV., r. 12.

*Exclusion of persons not coming in: to what extent.*—"The distribution of property, under the order of the Court, amongst persons found to be entitled, does not conclude the rights of persons who have an equal, or paramount, title to those amongst whom the distribution has taken place: *David v. Frowd*, 1 M. & K. 200; *Gillespie v. Alexander*, 3 Russ. 130; such persons are only precluded from taking the benefit of the order under which the distribution has been made; and they may, notwithstanding that order, institute proceedings against the persons who have taken the property under it, to compel them to refund. No proceeding can be instituted against the executor or administrator, or other person who, having fairly represented everything to the Court, has acted under its direction in distributing the fund: for the Court will not permit a party who has distributed a fund, in pursuance of its order, to be afterwards charged for what he has done under its directions: *Gillespie v. Alexander*; *Gaunt v. Taylor*, 2 Hare, 413. The same rule applies where the personal representative has advertised under 22 & 23 Vict. c. 35, s. 29: *Clegg v. Rowland*, 3 Eq. 368;" *Dan. Pr.*, p. 1025, and note (f).

*Right of unpaid creditor to follow assets.*—The right of a creditor whose debt has not been provided for to follow distributed assets into the hands of legatees, being an equitable right, will not be exercisable where the circumstances of the case would make such an exercise inequitable: *Blake v. Gale*, 32 Ch. D. 571.

*Claimant coming in after time fixed.*—See rule 57, *infra*.

807.

Peremptory advertisement.

**45.** Where an advertisement is required for the purpose of any proceeding in Chambers, a peremptory advertisement, and only one shall be issued, unless for any special reason it may be thought necessary to issue a second advertisement or further advertisements, and any advertisement may be repeated as many times and in such papers as may be directed.

This rule is taken from C. O. XXXV., r. 35.

*Advertisements.*—As to the number of insertions, see *Wood v. Weightman*, 13 Eq. 434.

808.

Preparation, signature, and insertion of advertisement.

**46.** The advertisement for claimants shall be prepared by the party prosecuting the judgment or order, and submitted to the Chief Clerk for approval, and when approved shall be signed by him, and such signature shall be sufficient authority to the printer of the Gazette to insert the same.

This rule is taken from C. O. XXXV., r. 36.

The words "for claimants" were inserted after the word "advertisement" by r. 27 of R. S. C., Dec. 1885.



**46A.** The advertisement for creditors shall be prepared and signed by the solicitor of the party prosecuting the judgment or order; and such signature shall be sufficient authority to the printer of the Gazette to insert the same.

The above is r. 28 of the R. S. C., Dec. 1885.

**Order LV.  
rr. 46A—50.**

Advertisement  
for creditors  
to be signed  
by solicitor.

**47.** Advertisements for creditors and other claimants shall fix a time, within which each claimant, not being a creditor, is to come in and prove his claim, and within which each creditor is to send to the executor or administrator of the deceased, or to such other party as the Judge shall direct, or to his solicitor, to be named and described in the advertisement, the name and address of such creditor and the full particulars of his claim, and a statement of his account, and the nature of the security (if any) held by him. Such advertisement shall be in one of the Forms Nos. 2 and 3 in Appendix L, with such variations as the circumstances of the case may require. At the time of directing such advertisement a time shall be fixed for adjudicating on the claims.

For forms, see *post*, p. 632; Dan. Forms, pp. 468, 475. Compare C. O. XXXV., r. 37, and Gen. Ord., 27th May, 1865, r. 1.

Where advertisements have been issued by the legal personal representative, under 22 & 23 Vict. c. 35, s. 29, the Court will not require further advertisements to be issued: *Cuthbert v. Wharmby*, W. N. (1869), 12. In such case the Chief Clerk will require to be satisfied that the advertisements issued were sufficient, in point of form and number of insertions, and an affidavit stating the result of such advertisements.

**48.** Claimants filing affidavits shall not be required to take office copies, but the person who examines the claims shall take office copies and produce the same at the hearing, unless the Judge shall otherwise direct.

This rule is taken from C. O. XXXV., r. 39.

*Cross-examination.*—A claimant may be cross-examined upon his affidavit in support of his claim: *Cast v. Poyser*, 26 L. J., Ch. 353. In an administration action by B. on behalf of himself and all other the creditors of a testator, whose estate was insolvent, it was held that the executors could not be deprived of the costs out of the assets of a cross-examination for the purpose of investigating B.'s claim, though no proceedings were taken to set aside the deed under which he claimed: *Re Barber*, 31 Ch. D. 665.

**49.** No creditor need make any affidavit nor attend in support of his claim (except to produce his security) unless he is served with a notice requiring him to do so as hereinafter provided.

This rule is taken from Gen. Ord., 27th May, 1865, r. 2.

**809.**  
Office copies of  
affidavits, by  
whom taken.

**811.**  
Proof of claim  
by creditors.

**50.** Every creditor shall produce the security (if any) held by him before the Judge at such time as shall be specified in the advertisement for that purpose, being the time appointed for adjudicating on the claims, and every creditor shall, if required, by notice in writing (Form No. 4, in Appendix L) to be given by the executor or administrator of the deceased, or by such other party as the Judge shall direct, produce all other deeds and documents

**812.**  
Production of  
securities, &c.



**Order LV.  
rr. 50—55.**

necessary to substantiate his claim before the Judge at his Chambers at such time as shall be specified in such notice.

This rule is taken from Gen. Ord., 27th May, 1865, r. 3.  
For form, see *post*, p. 633.

813.  
Penalty for  
non-compli-  
ance.

**51.** In case any creditor shall neglect or refuse to comply with the last preceding Rule, he shall not be allowed any costs of proving his claim unless the Judge shall otherwise direct.

This rule is taken from Gen. Ord., 27th May, 1865, r. 4.  
See r. 58, *infra*, as to costs of proving claim.

814.  
Examination  
of claims.

**52.** The executor or administrator of the deceased, or such other party as the Judge shall direct, shall examine the claims of creditors sent in pursuant to the advertisement, and shall ascertain, so far as he is able, to which of such claims the estate of the deceased is justly liable, and he shall, at least *seven clear days* prior to the time appointed for adjudication, file an affidavit (Form No. 5 in Appendix L) to be made by such executor or administrator, or one of the executors or administrators, or such other party, either alone or jointly with his solicitor or other competent person, or otherwise, as the Judge shall direct, verifying a list of the claims (Form No. 6 in Appendix L), the particulars of which have been sent in pursuant to the advertisement, and stating to which of such claims, or parts thereof respectively, the estate of the deceased is in the opinion of the deponent justly liable, and his belief that such claims, or parts thereof respectively, are justly due and proper to be allowed, and the reasons for such belief.

This rule is taken from Gen. Ord., 27th May, 1865, r. 5.  
For forms, see *post*, pp. 633, 634.

815.  
Postponement  
of verification.

**53.** In case the Judge shall think fit so to direct, the making of the affidavit referred to in the last preceding Rule shall be postponed till after the day appointed for adjudication, and shall then be subject to such directions as the Judge may give.

This rule is taken from Gen. Ord., 27th May, 1865, r. 6.

816.  
Claims un-  
disposed of.

**54.** Where on the day appointed for hearing the claims any of them remain undisposed of, an adjournment day for hearing such claims shall be fixed, and where further evidence is to be adduced, a time may be named within which the evidence on both sides is to be closed, and directions may be given as to the mode in which such evidence is to be adduced.

This rule is taken from C. O. XXXV., r. 40. As to adjournment, compare O. LIV., r. 8, *ante*, p. 395.

817.  
Allowance or  
disallowance  
of claims.

**55.** At the time appointed for adjudicating upon the claims of creditors, or at any adjournment thereof, the Judge may in his discretion allow any of the claims, or any part thereof respectively, without proof by the creditors, and direct such investigation of all or any of the claims not allowed, and require such further particulars, information, or evidence relating thereto as he may think fit, and

may, if he so think fit, require any creditor to attend and prove his claim, or any part thereof, and the adjudication on such claims as are not then allowed shall be adjourned to a time to be then fixed.

This rule is taken from Gen. Ord., 27th May, 1865, r. 7.

*Parties attending on claims of creditors.*—Except by special leave of the Court or a Judge, no party other than the executor or administrator is entitled to appear on the claim of any person not a party to the cause or matter, against the estate, in respect of any debt or liability: O. XVI., r. 47, *ante*, p. 188.

Order LV.  
rr. 55—57.

56. Notice (Form No. 7 in Appendix L) shall be given by the executor or administrator, or such other party as the Judge shall direct, to every creditor whose claim, or any part thereof, has been allowed without proof by the creditor, of such allowance, and to every such creditor as the Judge shall direct to attend and prove his claim or such part thereof as is not allowed by a time to be named in such notice (Form No. 8 in Appendix L), not being less than seven days after such notice, and to attend at a time to be therein named, being the time to which the adjudication thereon shall have been adjourned, and in case any creditor shall not comply with such notice, his claim, or such part thereof as aforesaid, shall be disallowed.

818.  
Notice of  
allowed or  
disputed claim.

This rule is taken from Gen. Ord., 27th May, 1865, r. 8.

For forms, see *post*, p. 635.

#### PROOF OF DEBTS.

*Evidence of claimant.*—The Court will look with suspicion on the unsupported evidence of the claimant: see *Hill v. Wilson*, 3 Ch. 888; *Whittaker v. Whittaker*, 21 Ch. D. 657; *Re Finch*, 23 Ch. D. 267. There is however no rule of law that the uncorroborated evidence of a claimant against the estate of a dead man will be rejected, but it will be regarded with jealous suspicion: *Re Garnett*, 31 Ch. D. 1. The Court will in general require corroboration: *Re Hodgson*, 31 Ch. D. 177. "If the evidence of the living man brings conviction to the tribunal which has to try the question, then there is no rule of law which prevents that conviction being acted on." *S. C.*, per Sir J. Hannen, at p. 183. See, too, *Re Farman*, 57 L. J., Ch. 637.

*Secured creditor.*—A creditor holding security must, if the deceased person died after 1st Nov. 1875, and his estate is insolvent, realize or value his security, and prove only for the balance. See *S. C. Jud. Act*, 1875, s. 10, *ante*, p. 69, and cases cited in the notes thereto.

*Disputing debt of plaintiff.*—In a creditor's action the executors may enter into fresh evidence for the purpose of contesting the plaintiff's claim, although the defence in support of which the evidence is adduced might have been raised at the hearing: *Cardell v. Hawke*, 6 Eq. 464; *Dan. Pr.*, p. 1023.

*Contingent claims.*—See *Re Bridges*, 17 Ch. D. 342.

*Foreign creditors.*—In the administration of the English estate of a deceased domiciled abroad, foreign creditors are entitled to dividends *pari passu* with English creditors: *Re Klabe*, 28 Ch. D. 175.

57. After the time fixed by the advertisement no claims shall be received (except as hereinbefore provided in case of an adjournment), unless the Judge at Chambers shall think fit to give special leave, upon application made by summons, and then upon such terms and conditions as to costs and otherwise as the Judge shall think fit.

819.  
Exclusion of  
claims after  
prescribed  
time.

This rule is taken from C. O. XXXV., r. 43, and Gen. Ord., 27th May, 1865, r. 10. Compare r. 44, *supra*. The words within the parenthesis would seem to have been retained by inadvertence. They refer to a provision contained in Gen. Ord., 27th May, 1865, r. 9, which has not been revived.



**Order LV.  
rr. 57—61.**

*Claims after time fixed by advertisement.*—An application may be made at any time before assets are distributed: *Lashley v. Hogg*, 11 Ves. 602; *Hartwell v. Colvin*, 16 Beav. 140; *Re Metcalfe*, 13 Ch. D. 236. As to terms imposed by the Court, see Dan. Pr., p. 1020, and cases there cited.

820.

Costs of creditor proving claim.

**58.** A creditor who has come in and established his debt in the Judge's Chambers under any judgment or order shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Judge, unless he shall think fit to direct the taxation thereof; and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.

This rule is taken from C. O. XL., r. 24.

*Costs of proof.*—Usually a sum is named for costs of proof at the time the debt is allowed. The ordinary fee allowed is £1 13s. 4d. in the case of debts under £5, and £2 2s. where the debt exceeds that sum: Dan. Pr., p. 1034, n. (g); 2 Seton, p. 832.

*Costs of plaintiff.*—These are not added to his debt, but form part of his costs in the action: *Flintoff v. Haynes*, 4 Hare, 309. In other cases the costs of proof are added to the debt, and if the estate should prove insufficient, the dividend will be paid on debt, interest, and costs: *Morshead v. Reynolds*, 21 Beav. 638.

*Unsuccessful claimant.*—A person failing to establish a claim may be ordered to pay costs: *Hatch v. Searles*, 2 Sm. & G. 147, at p. 157. Unless the claimant undertakes to pay the amount, it is necessary to obtain an order, which can be done on summons: *Yeomans v. Haynes*, 24 Beav. 127; Dan. Pr., p. 1035. An unsuccessful claimant coming in under an inquiry as to heir-at-law can be ordered to pay costs: *Re Knight*, 57 L. T. 238.

821.

List of allowed claims.

**59.** A list of all claims allowed shall, when required by the Judge, be made out and left in the Judge's Chambers by the person who examines the claims.

This rule is taken from C. O. XXXV., r. 44.

822.

Payments to creditors by Paymaster-General.

**60.** Where any judgment or order is made for payments by the Paymaster-General to creditors, the party whose duty it is to prosecute such judgment or order shall send to each such creditor or his solicitor (if any) a notice (Form No. 9 in Appendix L), that the cheques may be received from the Paymaster-General, and such party shall, when required, produce such judgment or order and any other papers necessary to enable such creditors to receive their cheques and get them passed.

This rule is taken from Gen. Ord., 27th May, 1865, r. 12. For form, see *post*, p. 635. As to the manner in which money in Court is to be paid out, see now rr. 44 to 68 of the Supreme Court Funds Rules, 1886, *post*, pp. 738—746.

823.

Service of notices by post.

**61.** Every notice by this Order required to be given to creditors or other claimants shall, unless the Judge shall otherwise direct, be deemed sufficiently given and served if transmitted by the post pre-paid to the creditor or other claimant to be served according to the address given in the claim sent in by him pursuant to the advertisement, or in case such creditor or other claimant shall have employed a solicitor, to such solicitor according to the address given by him.

This rule is taken from Gen. Ord. 27th May, 1865, r. 13.



XII.—Interest.

Order LV.  
rr. 62—65.

**62.** Where a judgment or order is made directing an account of the debts of a deceased person, unless otherwise ordered, interest shall be computed on such debts as to such of them as carry interest after the rate they respectively carry, and as to all others after the rate of four per cent. per annum from the date of the judgment or order.

824.  
Rate of  
interest on  
debts.

This rule is taken from C. O. XLII., r. 9.

**63.** A creditor whose debt does not carry interest, who comes in and establishes the same before the Judge in Chambers under a judgment or order of the Court or of the Judge in Chambers, shall be entitled to interest upon his debt at the rate of four per cent. per annum from the date of the judgment or order out of any assets which may remain after satisfying the costs of the cause or matter, the debts established, and the interest of such debts as by law carry interest.

825.  
Debts not  
carrying inte-  
rest.

This rule is taken from C. O. XLII., r. 10.

*Interest on debts.*—See Dan. Pr., pp. 1027—1034. In the case of an insolvent estate, interest stops at the date of the judgment for administration: *Re Summers*, 13 Ch. D. 136, such judgment being, by virtue of S. C. Jud. Act, 1875, s. 10, equivalent to an adjudication in bankruptcy. A secured creditor is entitled to apply the proceeds of his security, first in payment of interest, and then in payment of principal due to him, and to prove against the estate for any balance which may remain due, but without any interest on that balance: *Re Talbott*, W. N. (1888), 186.

*Separate and joint creditors.*—Where an order had been made declaring that testator's separate creditors were entitled to be paid in priority to his joint creditors, and that his separate creditors whose debts by law or special contract carried interest, were not entitled to interest in priority to the joint creditors in respect of the principal due to the joint creditors, and dividends amounting to 20s. in the £ were paid to both the joint and separate creditors on the principal sums due to them respectively, leaving an available surplus, it was held, that the separate creditors, whether their debts did or did not by law carry interest, were entitled to take their interest in priority to the joint creditors; and that the dividends received ought to be accounted for in ascertaining the amount of interest due, by treating the dividends as ordinary payments on account, and applying each dividend, first in payment of interest, and the surplus (if any) to the reduction of the principal: *Whittingstall v. Grocer*, 35 W. R. 4.

**64.** Where a judgment or order is made directing an account of legacies, interest shall be computed on such legacies after the rate of four per cent. per annum from the end of one year after the testator's death, unless otherwise ordered, or unless any other time of payment or rate of interest is directed by the will, and in that case according to the will.

826.  
Interest on-  
legacies.

This rule is taken from C. O. XLII., r. 11.

*Interest on legacies.*—See Dan. Pr., pp. 1037—1039.

*From what period interest runs.*—Legacies directed to be paid within four years from the testator's death were held entitled to interest as from one year from the death: *Re Olive*, 53 L. J., Ch. 525. Where it is for the benefit of all entitled that a reversionary interest should not be realized at once, a legatee, whose legacy could not be paid out of any other fund, was held entitled to interest from the expiration of one year from testator's death: *Re Blachford*, 27 Ch. D. 676.

XIII.—Certificates of the Chief Clerk.

**65.** The directions to be given for or touching any proceedings before the Chief Clerk shall require no particular form, but the

827.  
Directions to

**Order LV.  
rr. 65—68.**

be embodied  
in certificate.

result of such proceedings shall be stated in the shape of a concise certificate to the Judge. It shall not be necessary for the Judge to sign such certificate, and unless an order to discharge or vary the same is made, the certificate shall be deemed to be approved and adopted by the Judge.

This rule is taken from 15 & 16 Vict. c. 80, s. 32.

**CHIEF CLERK'S CERTIFICATE.**—See Dan. Pr., pp. 1140—1153; Dan. Forms, pp. 600—606. As to the Court fees payable, see Order as to S. C. Fees, 1884, Sched. Nos. 69—76, 81, *post*, pp. 672—676.

*Inquiry as to debts.*—Where in a creditor's action, the estate being insolvent, the solicitor to the plaintiff bought up debts, held, that the question whether the solicitor was trustee for the creditors of any profit on the purchase could not be raised by the Chief Clerk's certificate, in the absence of any direction in the order under which the certificate was made: *Re Tillett*, 32 Ch. D. 639.

*Action for administration of estate of deceased partner.*—As to distinguishing between separate debts of deceased and partnership debts, and as to bringing surviving partner before the Court, see *Re Hodgson*, 31 Ch. D. 177.

*Inquiry as to damages.*—It is not the practice of the Court to give as damages the difference between party and party costs and solicitor and client costs. And, where the Chief Clerk certified such costs as part of the damages, to which the plaintiff was entitled, the Court refused to do anything to enforce the certificate: *Harrison v. McSheehan*, W. N. (1885), 207.

828.

References in  
certificates to  
documents.

**66.** The certificate of the Chief Clerk shall not, unless the circumstances of the case render it necessary, set out the judgment or order or any documents or evidence or reasons, but shall refer to the judgment, or order, documents, and evidence or particular paragraphs thereof, so that it may appear upon what the result stated in the certificate is founded.

This rule is taken from C. O. XXXV., r. 47.

Certificate may  
be prepared by  
solicitor.

**66A.** The certificate shall, when the Judge shall so direct, be prepared by the solicitor of one of the parties, who shall obtain an appointment to settle the certificate, and shall give notice of such appointment to the other parties. No summons to settle the certificate of the Chief Clerk shall hereafter be issued.

The above is r. 29 of the R. S. C., Dec. 1885.

829.

Preparation,  
form, and  
signature of  
certificate.

**67.** The certificate of the Chief Clerk shall be in the Form No. 10 in Appendix L, with such variations as the circumstances may require, and when prepared and settled shall be transcribed in such form, and within such time as the Chief Clerk shall require, and shall be signed by the Chief Clerk either then or (if necessary) at an adjournment to be made for the purpose.

This rule is taken from C. O. XXXV., r. 48.

For form, see *post*, p. 635.

830.

Certificate  
where account  
directed.

**68.** Where an account is directed, the certificate shall state the result of such account, and not set the same out by way of schedule, but shall refer to the account verified by the affidavit filed, and shall specify by the numbers attached to the items in the account, which, if any, of such items have been disallowed or varied, and shall state what additions, if any, have been made by way of surcharge or



otherwise, and where the account verified by the affidavit has been so altered that it is necessary to have a fair transcript of the account as altered, such transcript may be required to be made by the party prosecuting the judgment or order, and shall then be referred to by the certificate. The accounts and the transcripts (if any) referred to by certificates shall be filed therewith, or retained in Chambers and subsequently filed, as the Judge in Chambers may direct. No copy of any such account shall be required to be taken by any party.

This rule is taken from C. O. XXXV., r. 46.

As to verification, see O. XXXIII., r. 4, *ante*, p. 273.

69. Any party may, before the proceedings before the Chief Clerk are concluded, take the opinion of the Judge upon any matter arising in the course of the proceedings without any fresh summons for the purpose.

Cf. 15 & 16 Vict. c. 80, ss. 29, 33.

*Adjudgment to Judge.*—See *Upton v. Brown*, 20 Ch. D. 731; *Re Watts*, 22 Ch. D. 5.

70. Every certificate, with the accounts (if any) to be filed therewith, shall be transmitted by the Chief Clerk to the Central Office to be there filed, and shall thenceforth be binding on all the parties to the proceedings, unless discharged or varied upon application by summons to be made before the expiration of *eight clear days* after the filing of the certificate; provided that the time for applying to discharge or vary certificates, to be acted upon by the Paymaster-General, without further order, or certificates on passing receivers' accounts, shall be *two clear days* after the filing thereof.

Cf. 15 & 16 Vict. c. 80, s. 34; C. O. XXXV., rr. 52—56.

**APPLICATION TO VARY CERTIFICATE.**—An application to vary the certificate is usually made by summons: *Dan. Pr.*, p. 1149; 1 *Seton*, p. 69. If the action is about to come on for hearing on further consideration, the summons is usually adjourned to come in with it, and will be set down to be heard with the action.

*Time.*—The eight days run during the vacations: *Ware v. Watson*, 7 De G., M. & G. 739.

*Application by bankrupt executor.*—The Court refused to permit a bankrupt executor, without the support either of his co-executors or of his own trustee in bankruptcy, to make use of his position in order to raise a contest in which he could have no beneficial interest, and dismissed a summons by him to vary the Chief Clerk's certificate: *Re Tallerman*, W. N. (1886), 125.

*Evidence.*—Evidence not used in Chambers will not be allowed to be used on a summons to vary: *Re Hooper*, 9 Jur., N. S. 570. Whether affidavits referred to in the certificate can be read on further consideration where there is no summons to vary, *quære*: *Re Brier*, 26 Ch. D. 238, at p. 242.

*Certificate itself not altered.*—Where an order varying a certificate is made, the certificate is not physically altered: *Fox v. Bearblock*, 30 W. R. 342.

*Motion to enforce certificate pending summons to vary.*—In such case the application will, as a rule, be ordered to stand over until the summons to vary has been disposed of: *Douthwaite v. Spensley*, 18 Beav. 74; *Craven v. Ingham*, 58 L. T. 486.

71. The Judge may, if the special circumstances of the case require it, upon an application by motion or summons for the purpose, direct a certificate to be discharged or varied at any time after the same has become binding on the parties.

*Special circumstances.*—See *Re Martin*, W. N. (1884), 112.

Order LV.  
rr. 68—71.

831.  
Opinion of  
Judge without  
fresh  
summons.

832.  
Filing certi-  
ficates in  
Central Office.

833.  
Discharge or  
variation of  
certificate.



**Order LV.  
rr. 71—74.**

*Accidental slip.*—Where there has been a slip, but no summons to vary has been taken out within the time, the proper course is to apply by summons: *Re Dove*, 27 Ch. D. 687.

**XIV.—Further Consideration.**

834.

Further con-  
sideration in  
Chambers.

**72.** Where any matter originating in Chambers shall, at the original or any subsequent hearing, have been adjourned for further consideration in Chambers, such matter may, after the expiration of *eight days* and within *fourteen days* from the filing of the Chief Clerk's certificate, be brought on for further consideration by a summons, to be taken out by the party having the conduct of the matter, and after the expiration of such fourteen days by a summons, to be taken out by any other party. Such summons shall be in the Form following:—

Form.

“That this matter, the further consideration whereof was adjourned “by the order of the                      day of                      , 18                      , may be further “considered,” and shall be served six clear days before the return. Provided that this Rule shall not apply to any matter, the further consideration whereof shall, at the original or any subsequent hearing, have been adjourned into Court.

This rule is taken from Chan. Reg., Aug. 8, 1857, r. 18.

**XV.—Registering and Drawing up of Orders in Chambers.**

835.

Notes of  
proceedings in  
Chambers.

**73.** Notes shall be kept of all proceedings in the Judges' Chambers with proper dates, so that all such proceedings in each cause or matter may appear consecutively, and in chronological order, with a short statement of the questions or points decided or ruled at every hearing.

This rule is taken from C. O. XXXV., r. 57.

836.

Drawing up  
and entry of  
orders.

**74.** Orders made in Chambers to be acted on by the Paymaster-General shall, unless the Judge otherwise directs, be drawn up by the Registrar; but every other order made in Chambers shall, unless the Judge otherwise directs, be drawn up by the Chief Clerk to whom, according to the distribution of business, the cause or matter in which such order is made belongs; and all orders drawn up by the Registrars shall be entered in the same manner as orders made in open Court.

The old rule 74 was annulled, and the above substituted therefor by r. 30 of R. S. C., Dec., 1885. In the Chambers of most of the Judges of the Chancery Division, the orders which are drawn up in Chambers are confined to orders made in matters of procedure, under directions to that effect given by the Judges to their Chief Clerks.

*Registrars.*—See O. LXII., *post*, p. 461.

*Entry of orders.*—Before an order made in Chambers can be enforced by attachment, it must be entered: *Ballard v. Tomlinson*, 31 W. R. 563. It would seem from the provisions of this rule that orders drawn up in Chambers did not require to be entered, but in practice such orders are entered by the proper officer, and it is desirable that this should be done, as without “entry” an order is not of record.

**APPEAL FROM ORDERS MADE IN CHAMBERS.**—See S. C. Jud. Act, 1873, s. 50, *ante*, p. 44; and O. LVIII., *post*, p. 446. An appeal will not as a rule be allowed direct from Chambers unless the Judge certifies that he requires no further argument: *Re Elsom*, 6 Ch. D. 346. Kay, J., has recently stated that his practice is not to allow an appeal direct from himself in Chambers, unless the

matter has been argued by counsel on both sides: *Re Somerville*, 56 L. T. 424; *A.-G. v. Llewellyn*, 58 L. T. 367. In the absence of a certificate of the Judge a motion to discharge the order should be made in Court: *Holloway v. Cheston*, 19 Ch. D. 516. Such motion should, by analogy to the practice on appeals, be made within *twenty-one days* from the drawing up of the order, except in the case of a simple refusal, in which case the twenty-one days must be reckoned from the refusal: *Heatley v. Newton*, 19 Ch. D. 326; *Re Lewis*, 31 Ch. D. 623; *Re Hardwidge*, 52 L. T. 40; *Re Norwich Equitable Co.*, 33 W. R. 270.

Order LV.  
rr. 74—75.

*Further evidence.*—After an application has been heard by the Judge in Chambers, fresh evidence will not be admitted on a motion to discharge the order: *Re Munns & Longden*, 32 W. R. 675; but see *Re Chifferiel*, 36 W. R. 806, in which case affidavits not used before the Chief Clerk were allowed to be used on terms, North, J., stating that in future he would not allow affidavits filed after time fixed by the Chief Clerk to be used unless with special leave. If no time fixed, this rule would not apply to evidence filed after the hearing before the Chief Clerk. *Re Travis, O'Sullivan v. Young*, C. A., May 6, 1885, was referred to, where Cotton, L. J., said that all affidavits filed before the matter came before the Judge in Court could be properly used, if notice had been given, though they had not been used before the Chief Clerk. In that case, however, no time had been fixed.

**74A.** In the case of orders to be drawn up by the Chief Clerks as in the last preceding rule mentioned, an order signed by a Chief Clerk, or a note or memorandum indorsed on the summons upon which any such order is made and signed or initialed by a Chief Clerk, shall be sufficient evidence of the order having been made.

Evidence of  
order having  
been made.

The above is r. 31 of the R. S. C., Dec., 1885. Cf. O. LII., r. 14, *ante*, p. 390.

**75.** The Forms Nos. 11 to 24 in Appendix L shall be used for the respective purposes therein mentioned, with such variations as circumstances may require.

837.  
Forms.

For forms, see *post*, pp. 636 *et seq.*

## ORDER LVI.

### REFERENCES IN ADMIRALTY ACTIONS.

Order LVI.  
rr. 1—3.

**1.** This Order shall apply to references by the Court or a Judge to the Admiralty Registrar, whether the reference be to the Registrar alone or to the Registrar assisted by one or by two Merchants.

838.  
References to  
Registrar and  
merchants.

This Order reproduces substantially the Admiralty Rules of 1859, Nos. 107—118 inclusive. It prescribes the procedure to be adopted in Admiralty causes when the Court directs a reference of any matter to the Registrar or Registrar assisted by merchants. As to the jurisdiction and practice of the Court to refer questions in Admiralty causes to the Registrar, see the Admiralty Court Act, 1861, 24 Vict. c. 10, and see also Roscoe's Adm. Practice, ed. 2, pp. 210—214.

**2.** Within *twelve days* from the day when the order for the reference is made, the solicitor for the claimant shall file the claim and affidavits; and within *twelve days* from the day when the claim and affidavits are filed, the adverse solicitor shall file his counter affidavits.

839.  
Time for filing  
claim and  
affidavits.

**3.** From the filing of the counter affidavits *six days* only shall be allowed for filing any further affidavits by either solicitor, save by order of the Court or a Judge, or by permission of the Registrar.

840.  
Time for  
further affi-  
davits.



**Order LVI.  
rr. 4—12.**

841.  
Notice for  
hearing of  
reference.

842.  
Proceeding  
with and ad-  
jourment of  
reference.

843.  
Evidence and  
witnesses.  
Shorthand  
writer.

844.  
Attendance of  
counsel.

845.  
Report of  
Registrar as to  
costs.

846.  
Time for  
taking up and  
filing report.

847.  
Neglect to  
take up report.  
Procedure by  
adverse party.

848.  
Time for filing  
objections to  
report.

849.  
Rules as to  
objections to  
report.

4. Within *three days* from the expiration of the time allowed for filing the last affidavits, the solicitor for the claimant shall file in the Registry a notice, with the stamps for the reference affixed thereto, praying to have the reference placed on the list for hearing; and if he shall not do so, the adverse solicitor may apply to the Court or a Judge to have the claim dismissed with costs.

5. At the time appointed for the reference, if either solicitor be present, the reference may be proceeded with; but the Registrar may adjourn the reference from time to time, as he may deem proper.

6. Witnesses may be produced before the Registrar for examination, and the evidence shall, on the application of either solicitor, but at the expense in the first instance of the party on whose behalf the application is made, be taken down by a shorthand writer or reporter appointed by the Court, who shall be sworn faithfully to report the evidence; and a transcript of the shorthand writer's or reporter's notes, certified by him to be correct, shall be admitted to prove the oral evidence of the witnesses on an objection to the Registrar's report.

See as to admitting fresh evidence on an objection to the Registrar's report, *The Thuringia*, 41 L. J. Adm. 20.

7. Counsel may attend the hearing of any reference, but the expenses attending the employment of counsel shall not be allowed on taxation, unless the Registrar shall be of opinion that the attendance of counsel was necessary.

8. The Registrar may, if he think fit, report whether any and what part of the costs of the reference should be allowed, and to whom.

9. The solicitor for the claimant shall, within *six days* from the time when he has received a notice from the Registry that the report is ready, take up and file the same in the Registry.

10. If the solicitor for the claimant shall not take the steps prescribed in the last preceding Rule, the adverse solicitor may take up and file the report, or may apply to the Court or a Judge to have the claim dismissed with costs.

11. A solicitor intending to object to the Registrar's report shall, within *six days* from the filing of the report, file in the Registry a notice, a copy of which shall have been previously served on the adverse solicitor; and within a further period of *twelve days* he shall file his petition in objection to the report.

As to reviewing the Registrar's report, see *The City of Buenos Ayres*, 25 L. T. 672; *The Thuringia*, 41 L. J. Adm. 20. As to the enlargement of the time for objection, see *Gowan v. Spratt*, 51 L. T. 266.

12. All the Rules respecting the pleadings and proofs in an action, and the printing thereof, shall, so far as they are applicable, apply to the pleadings, proofs, and printing in an objection to a report of the Registrar.



ORDER LVII.

INTERPLEADER.

Order LVII.  
r. 1.

1. Relief by way of interpleader may be granted,—

(a.) Where the person seeking relief (in this Order called the applicant) is under liability for any debt, money, goods, or chattels, for or in respect of which he is, or expects to be, sued by two or more parties (in this Order called the claimants) making adverse claims thereto :

850.  
In what cases  
relief granted.

(b.) Where the applicant is a sheriff or other officer charged with the execution of process by or under the authority of the High Court, and claim is made to any money, goods, or chattels taken or intended to be taken in execution under any process, or to the proceeds or value of any such goods or chattels by any person other than the person against whom the process issued.

Sheriff.

INTERPLEADER.

As to the origin and history of relief by interpleader, see *Story Eq. Jur.*, ss. 800—824.

*Effect of Order.*—In the Common Law Courts interpleader was regulated by the statutes 1 & 2 Will. IV. c. 53, and 23 & 24 Vict. c. 126, ss. 12—18 ; and by O. I., r. 2 of R. S. C., 1875, the procedure and practice under those Acts, as used by the Courts of Common Law, was applied to all actions in, and divisions of, the High Court. The present Order reproduces the substance of those enactments, with some important modifications. For a case in which the Court refused to direct an interpleader issue, see *Victor Söhne v. British and African Steam Navigation Co.*, W. N. (1888), 84.

*Former conflict of Courts of Law and Equity.*—Under the Interpleader Acts the Courts of Common Law could only compel interpleader where one of the claimants had actually commenced an action against the applicant for relief. In the Equity Courts it was sufficient that the applicant was harassed by conflicting claims—that “a claim was made against him and that he was in danger of being molested by conflicting rights”: *Story Eq. Jur.*, s. 808. The equity rule is now adopted.

*Assignment of chose in action.*—In the case of the assignment of a chose in action, if conflicting claims are made on the debtor, he may obtain relief either by interpleader or under the Trustee Relief Acts: *S. C. Jud. Act*, 1873, s. 25, sub-s. 6, *ante*, p. 21.

*The Crown.—Foreigner.*—The Crown cannot be made to interplead: *Candy v. Maugham*, 1 D. & L. 745. (The ground of this decision was that the Crown was not mentioned in the Interpleader Acts, and the decision is probably still good law, notwithstanding s. 6 of the Statute Law Revision Act, 1881, *post*, p. 509.) It seems that a foreigner outside the jurisdiction may be made to interplead, see *Belmonte v. Aynard*, 4 C. P. D. 352, where the question at issue was security for costs.

*Legal or equitable titles.*—Having regard to s. 25, sub-s. 11 of *S. C. Jud. Act*, 1873, it is conceived that it is immaterial whether the titles on which the claimants rely are legal or equitable. Even before the Act the strictness of the common law rule, which regarded only legal titles, had been considerably relaxed. See *Rusden v. Pope*, L. R., 3 Ex. 269; *Bank of Ireland v. Perry*, L. R., 7 Ex. 14; *Duncan v. Cashin*, L. R., 10 C. P. 554.

*Money paid under protest.*—In *Smith v. Critchfield*, 14 Q. B. D. 873, it was held that money paid under protest by a claimant was “proceeds or value of goods” within (b) of the above rule.

*Interpleader as to part only.*—A debtor against whom an action has been brought, and who has had notice of assignment of the debt, may interplead as to part only of the claim, and may dispute the residue. His application for relief

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may be made, either in the action under this Order, or by a separate proceeding under S. C. Jud. Act, 1875, s. 25, sub-s. 6. If under the latter jurisdiction, the Judge making the order has no power to stay proceedings in an action already commenced against the debtor: *Reading v. London School Board*, 16 Q. B. D. 686.

*Interpleader where damages claimed.*—A party may interplead where one of the claimants claims damages for the detention of the subject-matter in dispute: *Attenborough v. St. Katharine's Dock Co.*, 3 C. P. D. 450.

*Costs of stakeholder.*—A stakeholder interpleading who acts in good faith is entitled, although not a defendant in an action, to deduct from the fund in dispute the costs of the interpleader proceedings: *Clench v. Dooley*, 56 L. T. 122.

*Protection to sheriff.*—It would seem that where a sheriff enters premises of a person other than the execution debtor and there seizes goods, believing erroneously that such goods belong to the execution debtor, the sheriff may, upon interpleader proceedings, be protected against an action for trespass to the land, as well as against an action for seizure of the goods, if no substantial grievance has been done to the person whose premises have been wrongfully entered: *Smith v. Critchfield*, 14 Q. B. D. 873; *Winter v. Bartholomew*, 11 Ex. 704.

851.  
Conditions of  
relief.

**2. The applicant must satisfy the Court or a Judge by affidavit or otherwise—**

- (a.) That the applicant claims no interest in the subject-matter in dispute, other than for charges or costs; and
- (b.) That the applicant does not collude with any of the claimants; and
- (c.) That the applicant is willing to pay or transfer the subject-matter into Court or to dispose of it as the Court or a Judge may direct.

This rule is founded on 1 & 2 Will. IV. c. 58, s. 1.

*No interest in subject-matter in dispute.*—The Interpleader Acts required that the applicant should have no interest in the subject-matter in dispute. It was held on these Acts that a lien for costs or charges did not constitute such an interest in the subject-matter as to deprive the applicant of his right to relief: see *Best v. Hayes*, 1 H. & C. 718. The words "other than for charges or costs" in sub-s. (a) appear to affirm this decision. As to making "charges and costs" a first charge upon the fund, see *Attenborough v. St. Katharine's Dock*, 3 C. P. D. 450, at p. 466.

*Collusion.*—The objection that a stakeholder has, by merely taking an indemnity from one of two rival claimants to property in his hands, disentitled himself to relief because he has identified himself with and must be taken to "collude" with the claimant who gave the indemnity, cannot be raised by the claimant himself: *Thompson v. Wright*, 13 Q. B. D. 632.

*Form of affidavit.*—See Appendix B, No. 26, *post*, p. 551.

852.  
Adverse titles  
of claimants.

**3. The applicant shall not be disentitled to relief by reason only that the titles of the claimants have not a common origin but are adverse to and independent of one another.**

*Effect of Rule.*—This rule reproduces the provisions of s. 12 of the C. L. P. Act, 1860. Courts of equity refused relief where the applicant was under any special liabilities, other than those arising from the title to the property, with respect to the subject-matter claimed. They always refused, therefore, to grant interpleader to an agent or bailee as against his principal or bailor, where goods were claimed by another under an adverse independent title: *Crawshaw v. Thornton*, 2 My. & C. 1; *Story Eq. Jur.*, s. 820. Under the statute above cited the Common Law Courts were not bound by this technicality. See *Best v. Hayes*, 1 H. & C. 718, interpleader at instance of auctioneer; *Tanner v. European Bank*, L. R., 1 Ex. 261, interpleader at instance of bailee of policy of insurance; *Attenborough v. St. Katharine's Dock Co.*, 3 C. P. D. 450, see at p. 456, wharfingers.



4. Where the applicant is a defendant, application for relief may be made at any time after service of the writ of summons.

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The corresponding repealed rule required that the application should be made before defence, and the form of affidavit given in Appendix B, No. 26, seems to contemplate this.

853.

Time for application by defendant.

[Cf. O. I. r. 2.]

5. The applicant may take out a summons calling on the claimants to appear and state the nature and particulars of their claims, and either to maintain or relinquish them.

854.

Interpleader summons.

This rule is founded on the 1 & 2 Will. IV. c. 58, s. 1.

*Service of summons.*—See O. LXVII., *post*, p. 506. As to service on a foreigner out of the jurisdiction, see *Credits Gerendense v. Van Weede*, 12 Q. B. D. 171. See also *Van der Kan v. Ashworth*, W. N. (1884), 58.

*Particulars of claims.*—Where, upon an interpleader summons, the Master makes an order for the sheriff to sell and pay to the claimant the amount of his claim, the “claim” is limited to that put forward by the claimant before the Master on the hearing of the summons: *Hockey v. Evans*, 18 Q. B. D. 390.

6. If the application is made by a defendant in an action the Court or a Judge may stay all further proceedings in the action.

855.

Stay of action.

This rule is also taken from 1 & 2 Will. IV. c. 58, s. 1.

7. If the claimants appear in pursuance of the summons, the Court or a Judge may order either that any claimant be made a defendant in any action already commenced in respect of the subject-matter in dispute in lieu of or in addition to the applicant, or that an issue between the claimants be stated and tried, and in the latter case may direct which of the claimants is to be plaintiff, and which defendant.

856.

Direction of issue, or that claimant be made defendant.

This rule is taken from 1 & 2 Will. IV. c. 58, s. 1. For a form of issue, see Appendix B, No. 15, *post*, p. 548.

For forms of order, see Appendix K, Nos. 50—56, *post*, pp. 628—631.

*Third party having title.*—In an interpleader issue between the execution creditor and a claimant, it is open to the execution creditor to defeat the claim by establishing a title to the goods in a third party, which is superior even to his own: *Richards v. Jenkins*, 18 Q. B. D. 451.

8. The Court or a Judge may, with the consent of both claimants or on the request of any claimant, if, having regard to the value of the subject-matter in dispute, it seems desirable so to do, dispose of the merits of their claims, and decide the same in a summary manner and on such terms as may be just.

857.

Summary decision by consent.

This rule is taken from 23 & 24 Vict. c. 126, s. 14.

**SUMMARY DECISION.**—A summary decision by a Judge at Chambers is final and conclusive, and no appeal lies from such decision, and there is no power to give leave to appeal: *Lyon v. Morris*, 19 Q. B. D. 139.

*Decision by Master.*—Where a Master decided to dispose of the claims in a summary manner, and adjourned the summons for the production of evidence, this was held to be a summary decision within the above rule: *Bryant v. Reading*, 17 Q. B. D. 128. See further, as to decision by Master, r. 11, *infra*, and note thereto.

9. Where the question is a question of law, and the facts are not in dispute, the Court or a Judge may either decide the question without directing the trial of an issue, or order that a special case

858.

Questions of law and special case.



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be stated for the opinion of the Court. If a special case is stated, Order XXXIV. shall, as far as applicable, apply thereto.

This rule is founded on 23 & 24 Vict. c. 126, ss. 15 and 16.

859.

Claimant not  
appearing to  
be barred.

10. If a claimant, having been duly served with a summons calling on him to appear and maintain, or relinquish, his claim, does not appear in pursuance of the summons, or, having appeared, neglects or refuses to comply with any order made after his appearance, the Court or a Judge may make an order declaring him, and all persons claiming under him, for ever barred against the applicant, and persons claiming under him, but the order shall not affect the rights of the claimants as between themselves.

This rule is founded on 1 & 2 Will. IV. c. 58, s. 3.

860.

Judgment on  
interpleader,  
when final.

11. Except where otherwise provided by statute, the judgment in any action or on any issue ordered to be tried or stated in an interpleader proceeding, and the decision of the Court or a Judge in a summary way, under Rule 8 of this Order, shall be final and conclusive against the claimants and all persons claiming under them, unless by special leave of the Court or Judge, as the case may be, or of the Court of Appeal.

*Statutory provisions.*—By App. Jur. Act, 1876, s. 20, *ante*, p. 90, no appeal lies when by statute it is provided that the decision of the Court or a Judge is to be final.

By s. 17 of the C. L. P. Act, 1860, “the judgment in any such action or issue as may be directed by the Court or Judge in any interpleader proceedings, and the decision of the Court or Judge in a summary manner, shall be final and conclusive against the parties and all persons claiming by, from, or under them.”

*Cases.*—In *Robinson v. Tucker*, 14 Q. B. D. 371, it was decided (overruling *Burstall v. Bryant*, 12 Q. B. D. 103) that when an interpleader issue had been decided by a Judge and jury, and the Judge, upon the finding of the jury, had finally disposed of the matter under r. 13, but had given leave to appeal, a party dissatisfied with both the finding of the jury and the judgment of the Judge, might appeal under O. XL., r. 5, to a Divisional Court, and, under S. C. Jud. Act, 1873, s. 19, from that Court to the C. A. In *Dawson v. Fox*, 14 Q. B. D. 377, it was held that where it was sought to impeach the judgment of a Judge on the trial of an interpleader issue with respect only to the finding of the facts or the ruling of the law, and not with respect to the final disposal of the whole matter, an appeal lay from such judgment under S. C. Jud. Act, 1873, s. 19. In *Witt v. Parker*, 46 L. J., Q. B. 450, it was held that, where the issue had been tried in the ordinary way, an appeal lay to the C. A. from the subsequent order to enter judgment.

*Summary decision by Judge.*—A summary decision by a Judge at Chambers under r. 8 is final. No appeal lies from such order, and there is no power to give leave to appeal: *Lyon v. Morris*, 19 Q. B. D. 139. See, too, *Dodds v. Shepherd*, 1 Ex. D. 75; and it was held, that where a Judge at Chambers referred an interpleader summons to the Court, no appeal lay from the decision of the Court: *Turner v. Bridgett*, 9 Q. B. D. 55. In *Re Roberts, Evans v. Thomas*, W. N. (1887), 231, it was held, that where an order had been made by the Judge in Chambers but not drawn up, the Judge had a right to rehear the matter, if something were brought to his attention which had not been sufficiently considered.

*Summary decision by Master.*—Where a Master decides summarily and gives leave to appeal, the Judge at Chambers can hear such appeal: *Webb v. Shaw*, 16 Q. B. D. 658; and it would seem that, by virtue of O. LIV., r. 21, an appeal lies without leave from a summary decision of a Master to a Judge in Chambers: *Bryant v. Reading*, 17 Q. B. D. 128; *Clench v. Dooley*, 56 L. T. 122. But see, *contra*, *Westermann v. Rees*, W. N. (1883), 228; *Waterhouse v. Gilbert*, 15 Q. B. D. 569. It was held in *Waterhouse v. Gilbert* that s. 20 of the Act of 1876 was not affected by the above rule, and that, applying s. 17 of the C. L. P. Act, 1860, to

the rule, no appeal lay from the decision of the Q. B. D. to the C. A. : and that, where the Master had decided summarily, there was no power in the Divisional Court or in the C. A. to give leave to appeal to the C. A.

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rr. 11—15.

*Leave to appeal.*—The application for special leave to appeal will not be granted *ex parte*, as a matter of course: *Hetherington v. Groom*, W. N. (1884), 26.

*Appeal by sheriff.*—S. 17 of the C. L. P. Act, 1860, which makes a summary decision final and conclusive “against the parties,” does not apply to the sheriff, who can therefore appeal: *Smith v. Darlow*, 26 Ch. D. 605.

12. When goods or chattels have been seized in execution by a sheriff or other officer charged with the execution of process of the High Court, and any claimant alleges that he is entitled, under a bill of sale or otherwise, to the goods or chattels by way of security for debt, the Court or a Judge may order the sale of the whole or a part thereof, and direct the application of the proceeds of the sale in such manner and upon such terms as may be just.

861.  
Power to  
order sale.

This rule is taken from 23 & 24 Vict. c. 126, s. 13.

13. Orders XXXI. and XXXVI. shall, with the necessary modifications, apply to an interpleader issue; and the Court or Judge who tries the issue may finally dispose of the whole matter of the interpleader proceedings, including all costs not otherwise provided for.

862.  
Discovery,  
trial, and  
judgment.

*Effect of Rule.*—The provisions of O. XXXI., as to interrogatories, apply only in terms to actions; therefore, a doubt might have arisen whether interrogatories could have been administered in interpleader if the order had not been expressly applied.

The application of O. XXXVI. negatives the decision in *Hamlyn v. Betteley*, 6 Q. B. D. 63, where it was held that an interpleader issue could not be tried by a Judge without a jury, even by consent.

Under the former practice the Judge who tried the issue could not give judgment, but a subsequent application in chambers had to be made. The present rule dispenses with this unnecessary application and delay.

*Costs of sheriff.*—A successful claimant is entitled to recover the sheriff's charges subsequent to the interpleader order, possession money, &c., from the execution creditor: *Goodman v. Blake*, 19 Q. B. D. 77; *Searle v. Matthews*, W. N. (1883), 176; *C. v. D.*, *ibid.* 207.

14. Where in any interpleader proceeding it is necessary or expedient to make one order in several causes or matters pending in several Divisions, or before different Judges of the same Division, such order may be made by the Court or Judge before whom the interpleader proceeding may be taken, and shall be entitled in all such causes or matters; and any such order (subject to the right of appeal) shall be binding on the parties in all such causes or matters.

863.  
Matters in  
different Divi-  
sions.

This rule was introduced in 1883.

15. The Court or a Judge may, in or for the purposes of any interpleader proceedings, make all such orders as to costs and all other matters as may be just and reasonable.

864.  
Costs and  
incidental  
matters.

*Cases.*—As to ruling a sheriff to return a writ of *fi. fa.* pending an interpleader issue, see *Angell v. Baddeley*, 3 Ex. D. 49. As to the effect of the term “no action,” when a sheriff is ordered to withdraw, see *Hooke v. Ind, Cope & Co.*, 36 L. T. 467. As to when particulars will be ordered, see *Price v. Plummer*, W.



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26 W. R. 45. The Judge may order the appointment of a receiver and manager instead of a sale by the sheriff: *Howell v. Dawson*, 13 Q. B. D. 67. A Master, in making an order barring a claimant, when the applicant is a defendant, has no power under this rule to make it a term of the order that the plaintiff shall pay the costs of the defendant in the original action, apart from those in the interpleader proceedings: *Hansen v. Maddox*, 12 Q. B. D. 100.

*Security for costs.*—The rules in regard to security for costs in interpleader issues follow the analogy of the rules on the same subject in actions; and in applying these rules, the question whether a party to an interpleader issue is to be treated as a plaintiff or as a defendant, must be decided by the real merits of the case, and not by the mere form of the issue: *Rhodes v. Dawson*, 16 Q. B. D. 548. Defendants in an interpleader issue were ordered to give security: *Tomlinson v. Land and Finance Corporation*, 14 Q. B. D. 539.

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r. 1.**

## ORDER LVIII.

## APPEALS TO THE COURT OF APPEAL.

865.

Appeals, re-  
hearing.[O. LVIII.  
r. 2.]

Motion.

1. All appeals to the Court of Appeal shall be by way of rehearing, and shall be brought by notice of motion in a summary way, and no petition, case, or other formal proceeding other than such notice of motion shall be necessary. The appellant may by the notice of motion appeal from the whole or any part of any judgment or order, and the notice of motion shall state whether the whole or part only of such judgment or order is complained of, and in the latter case shall specify such part.

*Effect of order.*—This order reproduces substantially without alteration the provisions of the repealed O. LVIII.

*Bills of exceptions and proceedings in error.*—By rule 1 of O. LVIII. of the repealed Rules, bills of exceptions and proceedings in error were abolished. This rule has been repealed, but it is expressly provided by s. 6 of the Statute Law Revision and Civil Procedure Act of 1883, *ante*, p. 126, that such a repeal will not revive the old practice. These proceedings, therefore, remain abolished.

*Former practice at law.*—There was formerly no mode of reviewing the decision of a Common Law Court, except, first, by proceedings in error for defects apparent on the face of the record; or, secondly, in certain cases under the C. L. P. Act, 1854, by appeal against a judgment refusing, discharging, or making absolute a rule for a new trial, or to enter a verdict. From the vast number of judgments and rules not falling under either of these heads there was no appeal.

*Present system.*—Under the present system the general rule is that any judgment or order of any Court or Judge of the High Court is subject to an appeal to the Court of Appeal. As to the constitution of the Court of Appeal, see S. C. Jud. Act, 1875, s. 4, *ante*, p. 66; Appellate Jurisdiction Act, 1876, s. 15, *ante*, p. 87. As to the jurisdiction of the Court, see S. C. Jud. Act, 1873, ss. 4, 18, 19, *ante*, pp. 2, 9, 10; and note to rule 4, *infra*. As to its original jurisdiction, see *Brown v. Collins*, 25 Ch. D. 56. As to its alternative jurisdiction, see *Dan. Pr.*, p. 11; *Cropper v. Smith*, 24 Ch. D. 305.

*Rehearing.*—A Judge cannot rehear a case: *Re St. Nazaire Co.*, 12 Ch. D. 88; *Re Manchester Economic Building Society*, 24 Ch. D. 488. The Court of Appeal cannot rehear an appeal: *Flower v. Lloyd*, 6 Ch. D. 297.

*Action in nature of bill of review.*—The High Court has jurisdiction to give leave to bring an action in the nature of a bill of review, even where the judgment sought to be varied is a judgment of the Court of Appeal. Application



for leave to bring such action may be made by summons: *Falcke v. Scottish Imperial Insurance Co.*, 35 W. R. 794. Order LVIII.  
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**EXCEPTIONS TO RIGHT OF APPEAL.**—Appeals are not allowed in the following cases:—

- A. From any decision of the Court for Crown Cases Reserved, nor from any judgment in a criminal matter, except for error: S. C. Jud. Act, 1873, s. 47, *ante*, p. 41.
- B. From orders made by consent, or as to costs only when in discretion of the Court, except by leave: S. C. Jud. Act, 1873, s. 49, *ante*, p. 42.
- C. From an order made at Chambers, an appeal will not ordinarily lie direct to the Court of Appeal: S. C. Jud. Act, 1873, s. 50, *ante*, p. 44.
- D. From a judgment of a Divisional Court upon appeal from an inferior Court, except by leave: S. C. Jud. Act, 1873, s. 45, *ante*, p. 33.
- E. Where the decision of any Court whose jurisdiction is transferred to the High Court is by statute declared to be final: Appellate Jurisdiction Act, 1876, s. 20, *ante*, p. 90.
- F. Where there has been a submission to a Judge personally: *Ex parte Wilson*, 7 Ch. 45; *Bustros v. White*, 1 Q. B. D. 423.
- G. Where the determination complained of was merely the exercise of the discretion of the Judge: *Golding v. Wharton Salt Works Co.*, 1 Q. B. D. 374; *Watson v. Rodwell*, 3 Ch. D. 380; *Sheffield v. Sheffield*, 10 Ch. 206; *Swindell v. Birmingham Syndicate*, 3 Ch. D. 127; Dan. Pr., pp. 1272, 1273, and cases there cited. In a case of judicial discretion, the Court of Appeal will interfere only under exceptional circumstances: *Davy v. Garrett*, 7 Ch. D. 473; *Re Martin*, 20 Ch. D. 365; *Jarman v. Chatterton*, 20 Ch. D. 493; *Re Wray*, 36 Ch. D. 138.
- H. Where an undertaking not to appeal was embodied in the order: *Re Hull and County Bank*, 13 Ch. D. 161. [As to undertakings not to appeal, see note to S. C. Jud. Act, 1873, s. 19, *ante*, p. 12.]
- I. Where the subject-matter is very trifling: *Re Cross*, 7 Ch. 221.

**Enrolment.**—Enrolment of a decree does not now affect the right of appeal: *Hastie v. Hastie*, 2 Ch. D. 304.

**Appeals, by whom heard.**—An appeal from a final judgment or order must be heard before three Judges; one from an interlocutory order may be heard before two: S. C. Jud. Act, 1873, s. 12, *ante*, p. 72. As to the distinction between final and interlocutory orders, see r. 15, *infra*, and note to s. 12, *ante*, p. 73.

**Orders which may be made by a single Judge.**—Incidental orders may be made by a single Judge of the Court of Appeal: S. C. Jud. Act, 1873, s. 52, *ante*, p. 45.

**Vacations.**—It will be observed that s. 28 of S. C. Jud. Act, 1873, directs that provision shall be made by Rule of Court for the hearing of matters of urgency during vacation, by Judges of the Court of Appeal, as well as by Judges of the High Court. But though the rules do provide (O. LXIII., *post*, p. 465) for the attendance of vacation Judges of the High Court, there is no such provision with regard to Judges of the Court of Appeal. A single Judge of the Court of Appeal may at any time during vacation make any order to prevent prejudice to the claims of any parties pending an appeal as he may think fit: S. C. Jud. Act, 1873, s. 52, *ante*, p. 45. Where the refusal of an injunction is appealed from, but in consequence of the intervention of a vacation the hearing of the appeal is delayed, application should, if a mandatory injunction is desired, be made to a single Judge of the Court of Appeal: *Johnstone v. Royal Courts of Justice Chambers Co.*, W. N. (1883), 5. A single Judge of the Court of Appeal has no jurisdiction under s. 52, until an appeal has been presented: *Re Tussaud*, 31 Sol. J. 703.

**Appeals by persons not parties to the record.**—"It is not necessary that the person who appeals should be actually a party to the record; it is sufficient if he has an interest in the question, which may be affected by the judgment or order appealed from. Thus a person served with notice of judgment (*Ellison v. Thomas*, 1 De G., J. & S. 18); a claimant (*Bruff v. Cobbold*, 7 Ch. 217), or creditor (*Hungerford's Case*, cited 1 Sch. & Lef. 409) coming in under the judgment or order, and a person who, though not a party to the previous proceedings, is substantially the only person interested (*Jopp v. Wood*, 33 Beav. 372), may appeal from the judgment or order; but a person not a party to the record must first obtain from the Court of Appeal permission to appeal (*Re Markham*, 16 Ch. D. 1): Dan. Pr., pp. 1269, 1270. It is only, however, where the interest of the

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Party wishing to appeal will be bound by the judgment or order that an appeal at the instance of a party not on the record will be permitted: *Crawcour v. Salter*, 30 W. R. 329; *Re Youngs*, 30 Ch. D. 421. If a member of a class is dissatisfied with an order made in an action to which he is not a party, he cannot appeal from the order, but should apply to the Court below to be made a party: *Watson v. Cave*, 17 Ch. D. 19. As to appeal by a party to a special case, who did not appear at the hearing, see *Allum v. Dickinson*, 9 Q. B. D. 632.

*One of several plaintiffs.*—One of several plaintiffs, suing in the same interest, may appeal, though the others refuse to join in the appeal: *Beckett v. Atwood*, 18 Ch. D. 64.

*Bankrupt.*—A defendant who has become bankrupt since the judgment may appeal therefrom if it includes a personal order against him: *Dence v. Mason*, W. N. (1879), 177. In *United Telephone Co. v. Bassano*, 31 Ch. D. 630, bankrupt defendants were held entitled to appeal on giving security for costs.

*Pauper.*—As to practice on pauper appeals, see *Re Roberts*, 33 Ch. D. 265; O. XVI., rr. 22 *et seq.*, *ante*, p. 183.

*Appeal from salvage award.*—See *The Lancaster*, 9 P. D. 14.

*Service of notice of appeal.*—See r. 2, *infra*.

*Length of notice.*—See r. 3, *infra*.

*Evidence, &c. on appeals.*—See rr. 4, 11, 12, *infra*.

*Cross-appeals.*—See rr. 6, 7, *infra*.

*Entering appeals.*—See r. 8, *infra*.

*Time for appealing.*—See rr. 9, 15, *infra*.

*Stay of proceedings.*—See rr. 16, 17, *infra*.

*Costs.*—See r. 4, *infra*.

*Security for costs.*—See r. 15, *infra*.

*Practice on appeals.*—See Dan. Pr., pp. 1268—1313; Dan. Forms, pp. 621—629; Chitt. Arch., pp. 964—994; Chitt. Forms, pp. 486—495.

*Counsel.*—Two counsel are heard on each side in the Court of Appeal: *Sneesby v. L. & Y. Ry. Co.*, 1 Q. B. D. 42; *Hoare v. Bremridge*, 21 W. R. 43.

*Notice of motion.*—For form of notice of motion, see Dan. Forms, p. 624.

*What is a sufficient notice.*—An informal notice of appeal has been held sufficient: *Re West Jewell Tin Mining Co.*, 8 Ch. D. 806; but notice of an intention to give notice of appeal is not sufficient: *Re Blyth and Young*, 13 Ch. D. 416; *Re New Callao*, 22 Ch. D. 484. Where the appellant had changed his solicitor, but had not obtained an order to do so, a notice of appeal given by the London agents, who described themselves as the agents of the new solicitors, and who were also the agents of the former solicitors, was held an effectual, though inaccurate, notice: *Kettlewell v. Watson*, 31 W. R. 709.

*Appeal against part of order.*—Where an order including several matters is made as regards some of them without jurisdiction, but that part of the order is not appealed against, the Court of Appeal will not interfere with that part: *West v. Donovan*, 27 W. R. 697; but where the appellant appealed against part of a judgment, and the respondent gave a cross notice of appeal, it was held that the judgment might be varied in the appellant's favour on a point not covered by his notice of appeal: *Cracknall v. Janson*, 11 Ch. D. 1. If a respondent desires to have an order varied on a point in which the appellant has no interest, it seems he should give a substantive notice of appeal: *Re Cavander's Trusts*, 16 Ch. D. 270; but see *Ralph v. Carrick*, 11 Ch. D. 873. As to varying in part an order appealed against generally, see *Re Duchess of Westminster Co.*, 10 Ch. D. 307.

*Appeal standing over.*—Upon production to the registrar of a request or consent signed by the solicitors of all the parties, at the latest *four clear days* before the day when the appeal is likely to be in the paper, together with a statement of the reasons of the application, the case will be mentioned by the Cause Clerk to one of the members of the Court, and, if the reasons are considered sufficient, the appeal will be marked not to be in the paper until the day agreed upon without any more formal application being made to the Court: Notice, Nov. 1887, W. N. (1887), Pt. II., p. 469.

**2.** The notice of appeal shall be served upon all parties directly affected by the appeal, and it shall not be necessary to serve parties



not so affected; but the Court of Appeal may direct notice of the appeal to be served on all or any parties to the action or other proceeding, or upon any person not a party, and in the meantime may postpone or adjourn the hearing of the appeal upon such terms as may be just, and may give such judgment and make such order as might have been given or made if the persons served with such notice had been originally parties. Any notice of appeal may be amended at any time as the Court of Appeal may think fit.

*Service of notice of appeal.*—As to service on parties affected, see *Hunter v. Hunter*, 24 W. R. 504; *Purnell v. G. W. Ry. Co.*, 1 Q. B. D. 636.

*Service on trustee in bankruptcy.*—Notice of appeal from the refusal to annul an adjudication in bankruptcy must be served on the trustee as well as the petitioning creditor: *Ex parte Ward*, 15 Ch. D. 292.

*Substituted service.*—Leave to effect substituted service of notice of appeal may be given: *Ex parte Warburg*, 24 Ch. D. 364.

*Service on solicitor.*—Service on the solicitor on the record for the party on whom it is desired to serve the notice of appeal is sufficient: see O. VII., r. 3, *ante*, p. 143. That rule, as amended by R. S. C., Dec., 1885, sets at rest the difficulty which was raised in *De la Pole v. Dick*, 29 Ch. D. 351.

*Appearance by party not served.*—A party who would be affected by an order of the Court of Appeal may appear though not served, and obtain his costs: *Re New Callao*, 22 Ch. D. 484.

*Amendment of notice.*—When a four days' notice of appeal was given where a fourteen days' notice ought to have been given, the Court allowed the notice to be amended: *Re Stockton Iron Co.*, 10 Ch. D. 335, at p. 348. See also *Re Crosley*, 35 W. R. 294.

*Waiver of irregularity in notice.*—A respondent by appearing to an irregular notice waives the irregularity: *Re McRae*, 25 Ch. D. 16, at p. 19.

*Abandoned notice.*—Notice of discontinuance by the plaintiff terminates an appeal: *Conybeare v. Lewis*, 13 Ch. D. 469. Where an appeal has been formally withdrawn, the withdrawal cannot be rescinded. The proper course is to apply to the Court for leave to give a fresh notice of appeal: *Watson v. Clee* (No. 2), 17 Ch. D. 23. Where the proceedings upon an appeal have been irregular, the notice of appeal may be abandoned and a fresh notice given, upon which the appeal will proceed: *Norton v. L. & N. W. Ry.*, 11 Ch. D. 118. Where an appeal is called on and the appellant does not appear, the respondent may have the appeal dismissed without proving that he was duly served with a notice of appeal: *Ex parte Loves*, 7 Ch. D. 160. Where an appeal is abandoned the respondent is entitled to his costs of appeal, and may apply to the Court of Appeal for them: *Charlton v. Charlton*, 16 Ch. D. 273; but before applying to the Court he should apply first to the appellant. If he do not do so he will not be allowed the costs of his application to the Court: *Griffin v. Allen*, 11 Ch. D. 913. The application to the Court is on notice, not *ex parte*: *Re Oakwell Collieries*, 7 Ch. D. 706. As to the principle on which the costs of an abandoned appeal or other motion are taxed, see *Harrison v. Leutner*, 16 Ch. D. 559. The Court of Appeal will not make an order dismissing an appeal with costs on the *ex parte* application of the appellant: *Ormerod v. Bleasdale*, 54 L. T. 343.

*Withdrawal of appeal.*—An appeal once set down cannot be withdrawn by the appellant on merely obtaining the written consent of the respondent, but an application to the Court for leave to withdraw is necessary: *Re West Devon Great Consols Mine*, 36 W. R. 342.

**3.** Notice of appeal from any judgment, whether final or interlocutory, or from a final order, shall be a *fourteen days'* notice, and notice of appeal from any interlocutory order shall be a *four days'* notice.

As to the distinction between matters interlocutory and final, see note to S. C. Jud. Act, 1875, s. 12, *ante*, p. 73; r. 15, *infra*; *Re Stockton Iron Co.*, 10 Ch. D. 335.

*Interpleader issue.*—The judgment of a Divisional Court, affirming the judgment of a County Court Judge on an interpleader issue transferred to the County

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rr. 2, 3.

[O. LVIII.  
r. 3.]

Service.

867.

Length of  
notice.

[O. LVIII.  
r. 4.]



**Order LVIII.** Court under s. 17 of S. C. Jud. Act, 1884, is a "final order" within this rule:  
**rr. 3, 4.** *Hughes v. Little*, 18 Q. B. D. 32.

*Amendment of notice.*—See note to last rule.

*Notice for day not in sittings.*—A notice of motion is not bad by reason of being given for a day not in the sittings: *Re Coulton*, 34 Ch. D. 22.

868.

Powers of  
Court of  
Appeal.  
[O. LVIII.  
r. 5.]

Evidence.

Judgment.

Costs.

**4.** The Court of Appeal shall have all the powers and duties as to amendment and otherwise of the High Court, together with full discretionary power to receive further evidence upon questions of fact, such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Such further evidence may be given without special leave upon interlocutory applications, or in any case as to matters which have occurred after the date of the decision from which the appeal is brought. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (save as to matters subsequent as aforesaid) shall be admitted on special grounds only, and not without special leave of the Court. The Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order which ought to have been made, and to make such further or other order as the case may require. The powers aforesaid may be exercised by the said Court, notwithstanding that the notice of appeal may be that part only of the decision may be reversed or varied, and such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed from or complained of the decision. The Court of Appeal shall have power to make such order as to the whole or any part of the costs of the appeal as may be just.

#### POWERS OF COURT OF APPEAL:

*Jurisdiction of Court.*—As to the various jurisdictions vested in the Court of Appeal, see s. 18 of S. C. Jud. Act, 1873, *ante*, p. 9; and as to the general right of appeal and the limitations thereon, see s. 19, *ante*, p. 10, and notes thereto.

*Provisions of Jud. Act, 1873.*—The powers of the Court of Appeal to deal with appeals which it has jurisdiction to entertain are defined by S. C. Jud. Act, 1873. By s. 4 of that Act the Court of Appeal shall have and exercise appellate jurisdiction with such original jurisdiction as thereafter mentioned, as may be incident to the determination of any appeal; and by s. 19 for all the purposes of and incidental to the hearing of any appeal within its jurisdiction, and the amendment, execution, and enforcement of any judgment or order made on any such appeal, and for the purpose of every other authority expressly given to the Court of Appeal by that Act, the Court of Appeal shall have all the power, authority and jurisdiction by that Act vested in the High Court of Justice.

*Interlocutory order.*—By r. 14, *infra*, an interlocutory order, not appealed from, is not to prejudice the final decision.

*Original jurisdiction.*—The Court of Appeal has no original jurisdiction except such as is incident to the hearing of an appeal: *Re Dunraven Adave Co.*, 24 W. R. 327; *Allan v. Electric Telegraph Co.*, 24 W. R. 898; *Flower v. Lloyd*, 6 Ch. D. 297; *Brown v. Collins*, 25 Ch. D. 56, at p. 57.

*Re-hearing of appeal.*—The Court of Appeal has no power to re-hear an appeal from the High Court, even on grounds of fraud: *Flower v. Lloyd*, 6 Ch. D. 297; see also *Beynon v. Godden & Co.*, 4 Ex. D. 246. As to whether an action lies to set aside a judgment obtained by fraud, see *Flower v. Lloyd*, *ubi supra*, and *Flower v. Lloyd* (No. 2), 10 Ch. D. 327.

*Amendment.*—As to amendment, see O. XVI., r. 11, parties; O. XLI., judgments; and O. XXVIII., r. 12, pleadings and proceedings generally. Where at the trial application to amend the pleadings is made and refused, and judg-

ment is given against the applicant, an appeal against the judgment includes an appeal against the order refusing leave to amend: *Laird v. Briggs*, 16 Ch. D. 663.

In a case where a general verdict of a jury had been entered for the plaintiff, the Court of Appeal amended the record by entering the verdict for the plaintiff on the issues only: *Clack v. Wood*, 9 Q. B. D. 276. As to amendment by Court of Appeal of notice of motion for judgment, see *Gill v. Woodfin*, 25 Ch. D. 707.

*Fresh evidence.*—Where it is desired to adduce fresh evidence, either documentary or on affidavit, the proper course is to give notice to the other side that it is intended to ask for leave at the hearing to give such evidence: *Hastie v. Hastie*, 1 Ch. D. 562; *Justice v. Morsey Steel and Iron Co.*, 24 W. R. 199: but where a party wishes to examine fresh witnesses at the hearing of the appeal, he should make a special application for leave before the hearing: *Dicks v. Brooks*, 13 Ch. D. 652.

As to the principle upon which fresh evidence is allowed, see *Sanders v. Sanders*, 19 Ch. D. 373, at p. 380.

In *Gover's Case*, 24 W. R. 36, the Court of Appeal gave leave to subpoena a witness without deciding at the time whether his evidence would be admitted.

*Evidence improperly received or rejected by Court below.*—In *Bigsby v. Dickinson*, 4 Ch. D. 24; and *Re Chennell*, 8 Ch. D. 492, see at p. 505, evidence improperly rejected by the Court below was admitted by the Court of Appeal. See, too, *McCullin v. Gilpin*, W. N. (1881), 30. Where evidence is wrongly received in the Court below, but no objection is taken to it, the objection cannot, it seems, be taken in the Court of Appeal: *Gilbert v. Endean*, 9 Ch. D. 259.

*Oral evidence.*—In *Weston's Case*, 10 Ch. D. 579, see at p. 582, the Court of Appeal declined to let an appellant give oral evidence in his own favour. Where the note of oral evidence in the Court below had been lost, the Court allowed the evidence to be given over again: *Ex parte Firth*, 19 Ch. D. 419.

*Raising new case on appeal.*—An appellant is not, it seems, entitled to raise on appeal a new case inconsistent with his former case, even though the evidence given below is sufficient, without fresh evidence: *Ex parte Reddish*, 5 Ch. D. 882. See, too, *Ex parte Firth*, 19 Ch. D. 419.

*Evidence to be used on final appeal.*—See *Re Hooper*, 14 Ch. D. 1, as to the omission of evidence before the Court of Appeal which it is desired to use in the House of Lords.

*Affidavits.*—Affidavits intended to be used on appeal should be filed with the officer of the Division from which the appeal comes: *Watts v. Watts*, 45 L. J., Ch. 658. As to costs of unnecessary affidavits, see *Re Jones*, 14 Ch. D. 285.

*Examination de bene esse.*—Where the evidence of a witness had been rejected at the hearing of an action, and there was an appeal against that decision, the witness being dangerously ill, the Court of Appeal allowed his evidence to be taken *de bene esse* pending the appeal, the appellant undertaking to abide by any order the Court might make as to costs: *Solicitor to Treasury v. White*, 55 L. J., P. 79.

*Evidence on interlocutory application.*—Although an order made on a summons by a creditor in an administration action is considered as interlocutory, so far as regards the time within which an appeal must be brought, for other purposes it is a final order, and therefore fresh evidence cannot be given without the special leave of the Court: *Norton v. Compton*, 27 Ch. D. 392. An order refusing an application for issue of a writ of sequestration for breach of an injunction is an interlocutory order, and therefore the appellant has a right to adduce fresh evidence without leave: *Spenser v. Amcoats Vale Rubber Co.*, 58 L. T. 363.

*Power to enter judgment.*—The Court of Appeal has power under O. XL., r. 10, upon an application for a new trial, to enter judgment: *Williams v. Mercier*, 9 Q. B. D. 337. On an appeal from the order of a Divisional Court, upon an application for a new trial, the Court of Appeal has power, if all the facts are before the Court, to give judgment for the party in whose favour the verdict ought to have been given, instead of directing a new trial: *Millar v. Toulmin*, 17 Q. B. D. 603; but this decision has been doubted, *S. C.*, 12 App. Cas. 746.

*Varying minutes of order.*—See *General Share and Trust Co. v. Wetley*, 20 Ch. D. 130.

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r. 4.



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**rr. 4—6.**

*Costs usually follow event.*—It is the rule that costs follow the event of an appeal, unless the Court for special reasons otherwise orders: per James, L. J., 1 Ch. D. 41; *Olivant v. Wright*, 45 L. J., Ch. 1. The same rule was adopted on an appeal to the Court of Appeal from a County Court in Bankruptcy: *Ex parte Masters*, 1 Ch. D. 113; and on appeals from inferior Courts: *Leach v. S. E. Ry.*, 34 L. T. 134. The rule applies in an appeal to increase the amount of salvage in a salvage case: *The City of Berlin*, 2 P. D. 187; and apparently to appeals from the Admiralty Division generally: *The Condor*, 4 P. D. 115.

*Discretion.*—There is, however, a discretion in the Court under O. LXV., r. 1; and in a proper case a successful appellant may be deprived of his costs. Thus, where he fails to prove allegations of fraud, though succeeding on a point of law: *Ex parte Cooper*, 10 Ch. D. 313; where an appellant succeeds on a point not raised in the Court below: *Hussey v. Horne-Payne*, 8 Ch. D. 670; *Chard v. Jervis*, 9 Q. B. D. 178; where an appeal is only partially successful: *Child v. Stenning*, 11 Ch. D. 82; *Hood v. N. E. Ry. Co.*, 5 Ch. 525; *Re Cork & Foughal Ry. Co.*, 4 Ch. 748.

*Unsuccessful appeal.*—Where an appeal is unsuccessful, it is generally dismissed with costs; but under special circumstances the dismissal may be without costs: *Re Colquhoun*, 5 De G., M. & G. 35; *Eno v. Tatam*, 9 Jur., N. S. 481; *King v. King*, 1 De G. & J. 663; *Oriental Steam Co. v. Briggs*, 4 De G., F. & J. 191; *Re Cooper*, 20 Ch. D. 612; *In re Speight*, 13 Q. B. D. 42; *Ex parte Blease*, 14 Q. B. D. 123; but see *Ex parte Shead*, 15 Q. B. D. 338. Where there is a fund, costs of an appeal ought not to come out of it except on very rare and special occasions, but ought to be borne by the unsuccessful appellant: *Re Barlow*, 35 W. R. 737. The rule that there can be no appeal for costs may not be evaded by coupling another ground of appeal with the appeal for costs: *Graham v. Campbell*, 7 Ch. D. 490; *Harpham v. Shacklock*, 19 Ch. D. 207.

*Judgment below varied.*—Where the Court of Appeal varies an order of the Court below upon a point not argued in that Court, that is not enough to entitle the appellant to the costs of the appeal: *Games v. Bonnor*, 33 W. R. 64.

*Costs of abandoned appeal.*—See note to r. 3, *supra*; and *Harrison v. Leutner*, 16 Ch. D. 559.

*Costs of interlocutory order.*—Where the costs of an interlocutory order have been dealt with by the Court of Appeal, and the case finally comes up to the Court of Appeal for decision on the merits, the costs of the interlocutory order cannot be reconsidered: *Beynon v. Godden*, 4 Ex. D. 246.

869.  
Power to order  
new trial.  
[O. LVIII.  
r. 5.]

5. If upon hearing of an appeal, it shall appear to the Court of Appeal that a new trial ought to be had, it shall be lawful for the said Court of Appeal, if it shall think fit, to order that the verdict and judgment shall be set aside, and that a new trial shall be had.

870.  
Cross-appeal.  
[O. LVIII.  
r. 6.]

6. It shall not, under any circumstances, be necessary for a respondent to give notice of motion by way of cross-appeal, but if a respondent intends, upon the hearing of the appeal, to contend that the decision of the Court below should be varied, he shall within the time specified in the next Rule, or such time as may be prescribed by special order, give notice of such intention to any parties who may be affected by such contention. The omission to give such notice shall not diminish the powers conferred by the Act upon the Court of Appeal, but may, in the discretion of the Court, be ground for an adjournment of the appeal, or for a special order as to costs.

Notice.

*Effect of Rule.*—It will be observed that the language of this rule, dispensing with the necessity for notice of motion by way of cross appeal, is perfectly general; it is not limited to the case in which a respondent seeks to have the decision of the Court below varied as against the party appellant alone. But if the matter of his complaint affects a third party, as, for instance, a co-respondent, the rule requires him to give notice to the party so affected. And an omission to give such notice would of course be ground for the Court exercising



the power given to it in the last clause of the rule: see *Purnell v. Great Western Ry. Co.*, 1 Q. B. D. 636; *Hunter v. Hunter*, 24 W. R. 504, 527.

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rr. 6—8.

*Cross notice.*—A respondent may give notice to a co-respondent that, on the hearing of an appeal, he will ask for a variation of the order in his own favour: *Ex parte Payne*, 11 Ch. D. 539. If it is sought to vary the order on a point in which the appellant has no interest, this rule is not applicable, and a formal notice of appeal must be given: *Re Cavander's Trusts*, 16 Ch. D. 270; but see *Ralph v. Carriek*, 11 Ch. D. 873. See also note to r. 1, *supra*.

*Time for giving the notice.*—Notice under this rule need not be given within the time limited by r. 15: *Ex parte Bishop*, 15 Ch. D. 400.

*Costs.*—As to costs when there are cross notices of appeal, and the order below is varied, see *Cracknell v. Jansen*, 11 Ch. D. 1; *The Lauretta*, 4 P. D. 25; *Harrison v. Cornwall Rail. Co.*, 18 Ch. D. 334. They are usually given distributively. But where the cross notice has not materially increased the costs, no apportionment was directed, and a sum of £5 was allowed to defendants for their costs connected with the notice: *Robinson v. Drakes*, 23 Ch. D. 98. As to costs when appellant succeeds, see *Johnstone v. Cox*, 19 Ch. D. 17.

*Withdrawal of appeal.*—Where a respondent has given a cross notice, and appellant withdraws his appeal, such notice entitles the respondent to elect whether he continues or withdraws his cross appeal. If he elects to continue, the appellant has the right to give a cross notice that he will bring forward his original contention on the hearing of respondent's appeal: *The Beeswing*, 10 P. D. 18.

7. Subject to any special order which may be made, notice by a respondent under the last preceding Rule shall in the case of any appeal from a final judgment be an *eight days'* notice, and in the case of an appeal from an interlocutory order a *two days'* notice.

871.  
Length of  
notice.  
[O. LVIII.  
r. 7.]

8. The party appealing from a judgment or order shall produce to the proper officer of the Court of Appeal the judgment or order or an office copy thereof, and shall leave with him a copy of the notice of appeal to be filed, and such officer shall thereupon set down the appeal by entering the same in the proper list of appeals, and it shall come on to be heard according to its order in such list, unless the Court of Appeal or a Judge thereof shall otherwise direct, but so as not to come into the paper for hearing before the day named in the notice of appeal.

872.  
Entry.  
[O. LVIII.  
r. 8.]

*Proper officer.*—See O. LXXI., r. 1, *post*, p. 514.

**ENTRY OF APPEAL.**—Under this rule, not only must the notice of appeal be given in time, but it must be entered before the day for which notice is given: otherwise it will be treated as abandoned: *Re National Funds Assurance Co.*, 4 Ch. D. 305. In *Re Mansel*, 7 Ch. D. 711, the appeal, owing to a mistake of the solicitor's clerk, was not set down till the day following the day specified in the notice. The Court dismissed the appeal, and refused to extend the time. When, however, a defendant appealed but could not enter his appeal in time, owing to the omission of the plaintiff to draw up the order, the Court declined to entertain the objection on the ground of time: *Re Harker*, 10 Ch. D. 613.

*Costs, where appeal not set down.*—If the appeal is not set down, the respondent should not appear, but may make a substantive application for his costs: *Webb v. Mansel*, 2 Q. B. D. 117; see also *Charlton v. Charlton*, 16 Ch. D. 273; *Re Oakwell Collieries*, 7 Ch. D. 706. The costs of an application for an abandoned notice of appeal will not be allowed unless a previous demand for payment has been made and not complied with: *Griffin v. Allen*, 11 Ch. D. 913.

*Appeal from refusal.*—The rule requiring production of the order appealed from applies only where an order is made, not where it is refused: *Smith v. Grindley*, 3 Ch. D. 80.

*Form of entry of appeal.*—See *post*, p. 594.

*Appeals from interlocutory orders.*—The following notice as to appeals was issued in January, 1877:—"The senior Registrar has been directed to give notice that in future appeals from interlocutory orders in any of the following

**Order LVIII.**  
**rr. 8, 9.**

cases will be set down for hearing in a separate list:—1. On applications for injunctions, prohibitions, writs of *ne exeat regno* or *certiorari*, and for stop orders on securities or documents in Court. 2. On applications for and relating to the appointment of receivers, managers, or official liquidators. 3. On applications for enlarging the time for redemption, for payment into Court, or for doing any other act, or for taking any proceedings. 4. On applications relating to wards or infants, and the management of their property. 5. On applications relating to all matters of contempt, and to the execution of decrees, judgments, and orders. 6. On applications relating to the discovery and inspection of documents. 7. And, generally, on all applications relating merely to matters of practice or procedure. The solicitor applying to set down any appeal in such list will be required to produce his notice of motion, and certify at the foot thereof the class to which it belongs:” W. N. (1877), Pt. II., 88.

*Papers for use of the Court.*—The necessary papers for the use of the Judges on the hearing of appeals must be left at least *one week* before the appeal is likely to appear in the daily Court paper. The papers required are:—Three copies of the notice of appeal, three copies of the order or judgment appealed from, and three copies of the pleadings or other documents showing the nature of the appeal. The above papers must be put together in three sets—that is to say, one complete set for each Judge: Notice, 21 Nov., 1881; W. N. (1881), Pt. II., 501.

*Copies of documents.*—A copy of any material document should be provided for each member of the Court, and the costs allowed on taxation: *Re Randall*, 56 L. T. 8.

*Advance of appeal.*—“It seems that an appeal will generally be advanced if the right to an injunction is involved, but that there is no rule that it should be advanced in other cases:” Dan. Pr., p. 1297; *L. C. & D. Ry. Co. v. Imperial Mercantile Credit Association*, 3 Ch. 231; *Lazenby v. White*, 6 Ch. 89; *Adair v. Young*, 11 Ch. D. 136; *Wilson v. Church*, 11 Ch. D. 576.

*Withdrawal of appeal.*—An appeal once set down cannot be withdrawn by the appellants on merely obtaining the written consent of the respondent, but an application to the Court for leave to withdraw the appeal is necessary: *Re West Devon Great Consols Mine*, 36 W. R. 342.

873.  
Time to appeal  
in winding-up  
bankruptcy,  
&c.  
[O. LVIII.  
r. 9.]

**9.** The time for appealing from any order or decision made or given in the matter of the winding up of a company under the provisions of the Companies Act, 1862, or any Act amending the same, or any order or decision made in the matter of any bankruptcy, or in any other matter not being an action, shall be the same as the time limited for appeal from an interlocutory order under Rule 15.

*Time for appealing from interlocutory order.*—The time for appealing from an interlocutory order is *twenty-one days*: r. 15, *infra*. That is the time prescribed for notice of appeal from an order in winding up by s. 124 of the Companies Act, 1862. The same period is fixed in bankruptcy by rule 130 of the Bankruptcy Rules, 1886.

*Winding-up.*—The limitation of time by this rule applies to the winding-up order itself, as well as to any other order made in winding-up: *Re National Funds Assurance Co.*, 4 Ch. D. 305. But though an appeal from an order made on a winding-up petition is interlocutory as regards time, the order is final, and the appeal must be entered in the final list: *Re General Globe Insurance Co.*, 29 Sol. J. 66. Where a person not a party to a debenture holder's action applied for leave to appeal against an order made in such action, it was held that the order must, as regarded him, be treated as an order made in the winding-up of the company, and the application, being out of time, was refused: *Re Madras Irrigation Co.*, 23 Ch. D. 248.

*Bankruptcy.*—As to an appeal by a third party aggrieved by an adjudication of bankruptcy, see *Ex parte Tucker*, 12 Ch. D. 308; *Ex parte Sidebotham*, 14 Ch. D. 458; *Re Reed, Bowen & Co.*, 19 Q. B. D. 174.

“Any other matter.”—An appeal from an order under the Trustee Relief Act is within this rule, and must be brought within twenty-one days: *Re Baillie's Trusts*, 4 Ch. D. 785. So, too, is an order under the Vendor and Purchaser Act, 1874: *Re Blythe*, 13 Ch. D. 416.

*Extension of time.*—See *Re Jaques*, 18 Ch. D. 392.



10. Where an *ex parte* application has been refused by the Court below, an application for a similar purpose may be made to the Court of Appeal *ex parte* within *four days* from the date of such refusal, or within such enlarged time as a Judge of the Court below or of the Court of Appeal may allow.

11. When any question of fact is involved in an appeal, the evidence taken in the Court below bearing on such question shall, subject to any special order, be brought before the Court of Appeal as follows:

- (a) As to any evidence taken by affidavit, by the production of printed copies of such of the affidavits as have been printed, and office copies of such of them as have not been printed:
- (b) As to any evidence given orally, by the production of a copy of the Judge's notes, or such other materials as the Court may deem expedient.

*Fresh evidence.*—See r. 4, *supra*, and notes thereto.

*Affidavits.*—The Court of Appeal has, in several instances, to save expense to the parties, dispensed with the necessity of taking office copies of affidavits for the use of the Court. In *Siekles v. Norris*, 45 L. J., C. P. 148, the officer of the Court was directed to attend with the originals. In *Craeford v. Hornsea Co.*, 24 W. R. 422, the office copy taken by each side of its own affidavits, with the plain copies delivered to the opposite side, were held sufficient.

*Duty of appellant as to evidence.*—It is the duty of an appellant to bring before the Court of Appeal the whole of the evidence, oral as well as written, on which the order appealed from was founded. The Court of Appeal, however, has power, by way of indulgence, in a case where a note of oral evidence has been accidentally lost, to allow that evidence to be taken over again: *Ex parte Firth*, 19 Ch. D. 419.

*Judge's notes.*—As to the practice in the Chancery Division, see 2 Seton, pp. 1611, 1612. "The Judge's notes are not entered as evidence: *Plimpton v. Malcolmson*, W. N. (1876), 89. If the Judge's notes are required, application for them should be made to the Court of Appeal. It is irregular merely to bespeak the notes from the Judge's clerk: *Swan v. Barber*, W. N. (1879), 171; *Dawn v. Simmins*, W. N. (1879), 178. It would appear that a formal motion is not necessary; it will be sufficient to mention the name of the case, of the Judge, date, and place of trial, to the Registrar: *Stainbank v. Beckett*, W. N. (1879), 203." Dan. Pr., p. 1301, n. (e). The appellant should apply to one of the Judges of the C. A. through his clerk to ask the Judge before whom the evidence was taken to send a copy of the notes, and if this is not done the appeal will be ordered to stand over at the expense of the appellant: *Ellington v. Clark, Bunnett & Co.*, 38 Ch. D. 332.

*Where no note of judgment of Court below.*—A decision on a question of construction was reversed, but the Court, on the ground that it was not furnished with any information as to the reasons given by the Judge for his decision, refused to make any order as to the costs of the appeal: *Re McConnell*, 29 Ch. D. 76.

*Shorthand notes.*—Shorthand notes are admissible as representing a party's impression of what took place in the Court below, but the Court of Appeal assumes the correctness of the Judge's notes: *Laming v. Gee*, 28 W. R. 217.

*Shorthand notes of judgment.*—The costs of an appeal will include costs of shorthand notes of the judgment in the Court below, unless the Court otherwise orders. The unsuccessful party must apply for their disallowance: *Humphery v. Sumner*, 55 L. T. 649. See, too, *Collyer v. Isaacs*, 30 W. R. 70; *Smith v. Chadwick*, 20 Ch. D. 27, at p. 81; *L. & S. W. Ry. Co. v. Gomm*, 20 Ch. D. 562, at p. 589; *Re Morgan*, 35 Ch. D. 492, at p. 501.

*Shorthand notes of evidence.*—The costs of shorthand notes are not to be allowed too freely. A proper case for their allowance must be shown: *Re Duchess of Westminster* Co., 10 Ch. D. 307; *Kelly v. Byles*, 13 Ch. D. 682; *Re Hilleary and Taylor*, 26 Ch. D. 262. Special application should be made at the hearing: *Ashworth v. Outram*, 9 Ch. D. 483; *Hill v. Metropolitan Asylums Board*, 28 W. R. 664; *Earl de la Warr v. Miles*, 19 Ch. D. 80. See also O. LXV., r. 27 (9), *post*, p. 489.

Order LVIII.  
rr. 10, 11.

874.

*Ex parte* application.

[O. LVIII.  
r. 10.]

875.

Evidence of facts.

[O. LVIII.  
r. 11.]



**Order LVIII.  
rr. 11—15.**

The C. A. will not allow a shorthand note of evidence taken by a clerk to one of the solicitors to be referred to: *Ellington v. Clark, Bunnell & Co.*, 38 Ch. D. 332.

876.

Printing evi-  
dence.

[O. LVIII.  
r. 12.]

**12.** Where evidence has not been printed in the Court below, the Court below or a Judge thereof, or the Court of Appeal or a Judge thereof, may order the whole or any part thereof to be printed for the purpose of the appeal. Any party printing evidence for the purpose of an appeal without such order shall bear the costs thereof, unless the Court of Appeal or a Judge thereof shall otherwise order.

As to the mode of printing, delivery of copies, costs, &c., see O. LXVI., r. 7, *post*, p. 504.

*Voluminous evidence.*—In *Bigsby v. Dickinson*, 4 Ch. D. 24, the *viva voce* evidence being voluminous, and it being necessary to refer to it all, the Court allowed the costs of the transcript and printing of shorthand notes of the evidence, but not those of the attendance of the shorthand writer.

877.

Direction of  
Judge:  
evidence.

[O. LVIII.  
r. 13.]

**13.** If, upon the hearing of an appeal, a question arise as to the ruling or direction of the Judge to a jury or assessors, the Court shall have regard to verified notes or other evidence, and to such other materials as the Court may deem expedient.

*Nautical assessors.*—Where in a collision action the nautical assessors sitting in the Admiralty Division reduce their reasons into writing, parties appealing from the decision are not entitled to see those reasons, or to have copies of them for the purposes of the appeal: *The Banshee*, 56 L. T. 725.

878.

Interlocutory  
order not ap-  
pealed from.

[O. LVIII.  
r. 14.]

**14.** No interlocutory order or rule from which there has been no appeal shall operate so as to bar or prejudice the Court of Appeal from giving such decision upon the appeal as may be just.

See *Laird v. Briggs*, 16 Ch. D. 663; *White v. Witt*, 5 Ch. D. 589; *Beynon v. Godden*, 4 Ex. D. 246.

879.

Time to  
appeal.  
[Cf. O. LVIII.  
r. 15.]

Interlocutory  
order.

**15.** No appeal to the Court of Appeal from any interlocutory order, or from any order, whether final or interlocutory, in any matter not being an action, shall, except by special leave of the Court of Appeal, be brought after the expiration of *twenty-one days*, and no other appeal shall, except by such leave, be brought after the expiration of *one year*. The said respective periods shall be calculated, in the case of an appeal from an order in Chambers, from the time when such order was pronounced, or when the appellant first had notice thereof, and in all other cases, from the time at which the judgment or order is signed, entered, or otherwise perfected, or, in the case of the refusal of an application, from the date of such refusal. Such deposit or other security for the costs to be occasioned by any appeal shall be made or given as may be directed under special circumstances by the Court of Appeal.

*Effect of Rule.*—This rule varies to some extent, and adds to the provisions of the repealed O. LVIII., r. 15. The additions to the Order are, firstly, the provision as to time for appealing in *matters which are not actions* (as to which see S. C. Jud. Act, 1873, s. 100, *ante*, p. 63; and see also r. 9, *supra*); and secondly, the provision as to the calculation of time for appealing from an order in Chambers. This last provision seems to apply to Divisions other than the Queen's Bench Division. See notes to S. C. Jud. Act, 1873, s. 50, *ante*, p. 44.

*Appeal, when "brought."*—An appeal is "brought" when notice of appeal is served within the times specified: *Christopher v. Croll*, 16 Q. B. D. 66; *Ex parte Viney*, 4 Ch. D. 794. The fact that the offices are closed so that the appeal cannot be entered, does not extend the time for serving the notice: *Ex parte Saffery*, 5 Ch. D. 365.

*Rules regulating time for appeal.*—A double distinction is drawn in this rule, in regulating the time for appeal: first, between interlocutory and other appeals; secondly, between the making and the refusal of an order or judgment.

Security for  
costs.

*Interlocutory or final.*—As to interlocutory and final orders, see S. C. Jud. Act, 1875, s. 12, *ante*, p. 72; 2 Seton, pp. 1607—1610; *Standard Discount Co. v. La Grange*, 3 C. P. D. 67.

Order LVIII.  
r. 15.

**INTERLOCUTORY ORDERS.**—An order is not the less interlocutory, within the meaning of this rule, because it is included in an order on further consideration which is final: *Cummins v. Herron*, 4 Ch. D. 787; *White v. Witt*, 5 Ch. D. 589; see, however, r. 15A, *infra*. A summons by a creditor in an administration action is considered interlocutory for the purpose of determining the time within which the appeal must be brought, but for other purposes is a final order: *Norton v. Compton*, 27 Ch. D. 392; *Re Lewis*, 31 Ch. D. 623. A finding on an interpleader issue: *McAndrew v. Barker*, 7 Ch. D. 701; findings of a Chancery Judge on a separate trial of issues of fact: *Krehl v. Burrell*, 10 Ch. D. 420; an order made on an interlocutory application, even though definitely determining the rights of a claimant: *Pheysey v. Pheysey*, 12 Ch. D. 305; an order empowering the plaintiff to sign judgment under O. XIV.: *Standard Discount Co. v. La Grange*, 3 C. P. D. 67; an order on a motion to vary a special referee's report: *Dunkirk Colliery Co. v. Lever*, 26 W. R. 841; an order making absolute a rule for a new trial: *Highton v. Treherne*, 48 L. J., Ex. 167; an order discharging a rule for a new trial: *Wilks v. Judge*, W. N. (1880), 98; the decision of the Court upon a special case stated for its opinion by an arbitrator where the case has to go back to the arbitrator: *Collins v. Vestry of Paddington*, 5 Q. B. D. 368 (but not a judgment upon a special case stated by an arbitrator where the judgment may be final: *Shubbrook v. Tufnell*, 9 Q. B. D. 621); an order directing a review of taxation: *Re Watson*; *Ex parte Phillips*, 57 L. T. 215; have been held to be interlocutory orders.

**FINAL ORDERS.**—An order determining the rights of the parties: *Re Stockton Iron Co.*, 10 Ch. D. 335, at p. 349; an order overruling a demurrer: *Trowell v. Shenton*, 8 Ch. D. 318; an order on further consideration: *Cummins v. Herron*, 4 Ch. D. 787, per Jessel, M.R., at p. 789; an order made on motion for judgment on admissions on the pleadings: *A.-G. v. G. E. Ry. Co.*, 27 W. R. 759; an order confirming a Chief Clerk's certificate assessing the amount payable as damages sustained by reason of a trespass: *A.-G. v. Tomline*, 15 Ch. D. 150, at p. 152; an order for foreclosure under O. XV.: *Smith v. Davies*, 31 Ch. D. 595; the judgment of a Divisional Court affirming the judgment of a County Court Judge on an interpleader issue: *Hughes v. Little*, 18 Q. B. D. 32; an order dismissing an action: *International Society v. Moscow Gas Co.*, 7 Ch. D. 241; have been held to be final orders.

*Order made on originating summons.*—An originating summons is a civil proceeding commenced otherwise than by writ in manner prescribed by Rules of Court, and is therefore an action within S. C. Jud. Act, 1873, s. 100. Consequently an order dismissing such a summons is not an order made "in a matter not being an action," and an order for dismissal of such a summons may be appealed from within a year: *Re Fawsitt*, 30 Ch. D. 231. See also *Re Vardon's Trusts*, 55 L. J., Ch. 259.

**GRANT OR REFUSAL.**—The second distinction is between an order or judgment granting, and one refusing, an application. In the former case, the time runs from the time when the judgment or order is signed, entered, or otherwise perfected. Thus, from an order in bankruptcy, the time now runs from the signing, not the pronouncing, of the order: Bankruptcy Rules, 1886, No. 130, and *Ex parte Gerrard*, 5 Ch. D. 61; *Ex parte Saffery*, *ibid.*, 365.

*Refusal.*—On the other hand, an appeal from the refusal of an application runs from the actual refusal, not from the drawing up or perfecting of the judgment or order. See the reason of this distinction discussed by Mellish, L. J., in *Swindell v. Birmingham Syndicate*, 3 Ch. D. 127, at p. 133. As to when a judgment subject to an account being taken is perfected, see *Gathercole v. Smith*, W. N. (1880), 102. The dismissal of a suit at the hearing is a refusal of an application within the meaning of this rule: *International Financial Society v. Moscow Gas Co.*, 7 Ch. D. 241; as is also the disallowance of a creditor's claim under an administration judgment: *Re Clagett*, 20 Ch. D. 134. Where of several claims some are allowed and some refused, the time runs in the case of those refused from the actual refusal: *Trail v. Jackson*, 4 Ch. D. 7; *Berdan v. Birmingham Small Arms Co.*, 7 Ch. D. 24; but this rule is confined to cases where the application is clearly severable: *Jones v. Andrews*, 58 L. T. 601. The refusal must be a simple and unqualified refusal in order that time may run therefrom. An order refusing an application, but containing also a direction as to costs, is a simple



**Order LVIII.**  
**r. 15.**

refusal: *Swindell v. Birmingham Syndicate*, 3 Ch. D. 127; see, too, *Re Clagett*, 20 Ch. D. 134, and *Hooper v. Smith*, 26 Ch. D. 614; but an order directing payment out of Court to a petitioner of one half of a fund, when he had asked for the whole, is not: *Re Michell*, 9 Ch. D. 5; nor is an order which, in addition to refusing an application, contains a declaration as to the rights of the parties: *Re Clay and Tetley*, 16 Ch. D. 3. Where an application upon which an order had been made in Chambers was re-heard in Court and refused, it was held under the repealed rule that the time ran from the refusal in Court: *Dickson v. Harrison*, 9 Ch. D. 243.

*Applications to discharge orders made in Chambers.*—The analogy of this rule will be followed in the case of motions to discharge orders made in Chambers: *Heatley v. Newton*, 19 Ch. D. 326; *Re Norwich Equitable Co.*, 51 L. T. 620; *Re Woodbridge*, W. N. (1884), 187; *Re Hardwidge*, 52 L. T. 40; *Re Lewis*, 31 Ch. D. 623.

**EXTENSION OF TIME.**—An application for an extension of time will not be heard *ex parte*: *Re Lawrence*, 4 Ch. D. 139.

A mistake of law as to the time to appeal, arising from a misconstruction of the rules, is no ground for extending the time. That is only done if the appellant has been misled by the other side, or in case of unavoidable accident: *International Financial Society v. Moscow Gas Co.*, 7 Ch. D. 241; *Highton v. Treherne*, 48 L. J., Ex. 167; *McAndrew v. Barker*, 7 Ch. D. 701; as explained in *Re Blyth*, 13 Ch. D. 416, at p. 420, and *Re New Callao*, 22 Ch. D. 484; *Re Mansel*, 7 Ch. D. 711. See, too, *Ex parte Ward*, 15 Ch. D. 292. The fact that a decision of the Court of Appeal has thrown doubt on the correctness of the decision of the High Court in another case which was not appealed from, is no ground for extending the time in that case: *Craig v. Phillips*, 7 Ch. D. 249; *Kurtz v. Spence*, 36 Ch. D. 770, at pp. 773, 775. Where an appellant withdrew a valid notice of appeal, thinking it informal, and the next day served a second notice, and the objection was taken that the second notice was too late, the Court enlarged the time: *Taylor's Case*, 8 Ch. D. 643. Where an order had been made upon six directors jointly and severally to replace certain sums received by three of them out of the funds of a company, with liberty to the three who had not received the money to apply as to the liability of those who had, and on the last day for appealing the three who had received appealed from the order without the knowledge of the other three, it was held that leave to appeal after time ought to be given to the other three: *Re Clayton Mills Manufacturing Co.*, 37 Ch. D. 28. Where a third party appealed from an adjudication of bankruptcy which injuriously affected him, after the expiration of the proper time, but as soon as he was aware of the facts, the time was extended: *Ex parte Tucker*, 12 Ch. D. 308. See also as to extension of time to re-hear a bankruptcy matter, *Re Jaques*, 18 Ch. D. 392; and *Ex parte Ritso*, 22 Ch. D. 529.

*Discretion.*—The rule is discretionary. See, as to the principles on which the discretion should be exercised, *Collins v. Paddington Vestry*, 5 Q. B. D. 368; *Curtis v. Sheffield*, 21 Ch. D. 1; and *Re Tippitt*, 2 Morell's Bankruptcy Cases, 229. "What the Court has in each case to do is to see whether there are grounds for the Court to give the special leave; and I know of no rule other than this, that the Court has power to give the special leave, and, exercising its judicial discretion, is bound to give the special leave, if justice requires that that leave should be given": *Re Manchester Economic Building Society*, 24 Ch. D. 488, at p. 497; per Brett, M. R.

**SECURITY FOR COSTS.**

*Application: how made.*—An application for security for costs is by motion on notice; no leave to set down the motion is necessary: *Grills v. Dillon*, 2 Ch. D. 325. For form of notice of motion, see Dan. Forms, p. 626; Chitt. Forms, p. 490.

*Application must be prompt.*—The application should be made promptly: *Re Indian Mining Co.*, 22 Ch. D. 83; see also *Corporation of Saltash v. Goodman*, 43 L. T. 464; *Ex parte Hutchins & Romer*, W. N. (1879), 99. After the costs have been incurred it is in general too late to apply: *Grant v. Banque Franco-Egyptienne*, 1 C. P. D. 143; *Pooley's Trustee v. Whetham*, 33 Ch. D. 76. But where there had been no delay, security was ordered to be given, though the appeal and the application for security were in the paper on the same day: *Re Clough*, 35 Ch. D. 7; *Ellis v. Stewart*, 57 L. T. 30.

*Insolvency or poverty of appellant.*—The insolvency of the appellant is a special circumstance within the meaning of this rule, and *prima facie* constitutes a sufficient reason for ordering him to give security for costs: see per Cotton, L. J., in



*Re Ivory*, 10 Ch. D. 372, at p. 377; see also *Wilson v. Smith*, 2 Ch. D. 67; *Usill v. Brearley*, 3 C. P. D. 206; *Waddell v. Blockey*, 10 Ch. D. 416; *Harlock v. Ashberry*, 19 Ch. D. 84, where it was stated that extreme poverty was of itself a sufficient ground for ordering security. There is no general rule that an insolvent appellant will be exempted from giving security for the costs of an appeal because the case involves a question of law which has not been previously considered by a Court of Error: *Farrer v. Laey*, 28 Ch. D. 482. The case of *Rourke v. White Moss Colliery Co.*, 1 C. P. D. 556, is not an authority the other way. The fact that the appellant had not complied with a bankruptcy summons was held sufficient evidence of insolvency: *Nixon v. Sheldon*, 50 L. T. 245. On an appeal from the County Court by an infant plaintiff, his next friend, though pleading poverty, was ordered to give security: *Swain v. Fellows*, 18 Q. B. D. 585.

"*Special circumstances.*"—Poverty, however, is not the only ground upon which security for the costs of an appeal will be ordered. Such security will also be ordered where the proceedings appear to be an abuse of the process of the Court, as where a plaintiff, whose action had been dismissed as frivolous, brought another action for substantially the same cause, and appealed from an order dismissing such second action as frivolous: *Weldon v. Myles*, 20 Q. B. D. 331.

*Appeal from winding-up order.*—Where an order for winding up a company has been made, and the company alone appeals from the order without joining any one personally responsible for costs, security will be ordered: *Re Diamond Fuel Co.*, 13 Ch. D. 400, at p. 412; *Re Photographic Artists' Association*, 23 Ch. D. 370; see, too, *Northampton Coal Co. v. Midland Waggon Co.*, 7 Ch. D. 500.

*Appellant foreigner.*—The fact that the appellant is a foreigner resident abroad, with no assets in this country, is a special circumstance within the rule: *Grant v. Banque Franco-Egyptienne*, 2 C. P. D. 430.

*Other cases where security has been required.*—See *Clarke v. Roche*, 46 L. J., Ch. 372 (failure to pay costs already incurred); *Smith v. White*, W. N. (1879), 203 (delay in prosecuting action); *Wilson v. Church*, 11 Ch. D. 576 (after order made dismissing an action, and an order of C. A. for an injunction restraining trustees from parting with a fund pending an appeal); *Re Strong*, 31 Ch. D. 273 (insolvent solicitor appealing from an order to strike off the rolls, and comprising other directions).

*Admiralty action in rem.*—The defendant in an Admiralty action *in rem* who appeals, will not, without special circumstances, be ordered to give security: *The Victoria*, 1 P. D. 280.

*Appeal from Stannaries Court.*—The provision in s. 32 of the Stannaries Act, 1869 (32 & 33 Vict. c. 19), requiring a deposit of £20 to be made with the registrar of the Stannaries Court on appeals from the Vice-Warden, is not abrogated by the S. C. Jud. Acts, or any of the rules thereunder: *Re West Devon Great Consols Mine*, 38 Ch. D. 51.

*Where right to security is clear.*—Where it is clear that there is a right to security, application should first be made to the party, and a reasonable offer of security should be accepted. The Court, in dealing with the costs of an application for security, will consider the conduct of the parties in this respect: *The Constantine*, 4 P. D. 156.

*Set off of costs.*—Where costs were due to the appellant from P., who died without paying them, upon an application for security for costs by P.'s executor, it was held that the fact that the costs might be set off against the costs of the appeal, was not a sufficient answer to the application, because the executor was entitled to be indemnified, though it would have been a good answer to P.: *Re Knight*, 58 L. T. 699.

*Security: how given.*—Security may be ordered either by deposit or by bond with surety: *Phosphate Sewage Co. v. Hartmont*, 2 Ch. D. 811.

*Amount of security.*—The true test as to the amount of security is not the amount at stake, but the amount of costs which would probably be incurred on behalf of the respondent: *Morcroft v. Evans*, W. N. (1882), 189. In *Wilson v. Church*, 11 Ch. D. 576, security was ordered in £200. See O. LXV., r. 6, *post*, p. 478.

*Bankruptcy appeals.*—In a bankruptcy appeal the appellant, at or before the time of entering an appeal, must lodge in Court £20 as security for costs. In any special case the Court of Appeal may increase or diminish the amount of such security, or dispense with it: Bankruptcy Rules, 1886, r. 131; *Re Robertson*, 2 Morrell's Cases, 117. Protracted litigation in regard to the same matter

**Order LVIII.** was held a ground for increasing the deposit: *Re McHenry*, 17 Q. B. D. 351.  
**rr. 15, 16.** A Government Department need not lodge the deposit: *Re Mutton*, 4 Morrell's Cases, 115.

*Non-compliance with order for security.*—Where security is ordered to be given it is not the practice to fix a time for giving it; but the order must be complied with within a reasonable time, otherwise the appeal will be dismissed: *Polini v. Gray*, 11 Ch. D. 741; explaining *Re Ivory*, 10 Ch. D. 372, where an appeal was dismissed after failure for two months only to give security. Each case must be judged on its own merits: see further, *Judd v. Green*, 4 Ch. D. 784, and *Vale v. Oppert*, 5 Ch. D. 633. *Three months* will, as a rule, be considered more than a reasonable time, unless there are extenuating circumstances: *Washburn and Moen Manufacturing Co. v. Patterson*, 29 Ch. D. 48.

*Effect of order of dismissal.*—Where an appellant fails to give security by the time named in the order, his right of appeal is gone for ever: *Harris v. Fleming*, 30 W. R. 555. For form of order, see 2 Seton, p. 1614.

Time for  
appealing  
against order  
on further  
consideration.

**15A.** The time for appealing against an order made on the further consideration of a cause, and on the hearing of a summons to vary the certificate on which such order is made, shall be the same as the time for appealing against the order on further consideration.

The above is r. 32 of R. S. C., December, 1885, and came into operation on the 1st of January, 1886.

880.  
Stay of pro-  
ceedings.  
[O. LVIII.  
r. 16.]

**16.** An appeal shall not operate as a stay of execution or of proceedings under the decision appealed from, except so far as the Court appealed from, or any Judge thereof, or the Court of Appeal, may order; and no intermediate act or proceeding shall be invalidated, except so far as the Court appealed from may direct.

#### STAY OF PROCEEDINGS.

*Application.*—Where a stay of proceedings is not granted when judgment is given, a substantive application for an order to stay may be made. The application must be made in the first instance to the Court below: see rule 17, and *A.-G. v. Swansea Improvement Co.*, 9 Ch. D. 46. The application must be made on notice, not *ex parte*: *Republic of Peru v. Weguelin*, 24 W. R. 297; *Emma Mining Co. v. Lewis*, 48 L. J., Q. B. 504. In the Queen's Bench Division it is made to a Master at Chambers: *Goddard v. Thompson*, 47 L. J., Q. B. 382; *Oppert v. Beaumont*, 18 Q. B. D. 435. An appeal from an order to stay proceedings need not be set down in the list of appeals: *A.-G. v. Swansea Improvement Co.*, 9 Ch. D. 46, at p. 47.

*Concurrent jurisdiction.*—This rule gives concurrent jurisdiction to the Court below and the Court of Appeal: *Cropper v. Smith*, 24 Ch. D. 305; and see r. 17, *infra*.

*Terms of order.*—As to when, and the terms on which, proceedings will be stayed pending an appeal, see *Vale v. Oppert*, 5 Ch. D. 969; *Adair v. Young*, 11 Ch. D. 136. Where an order is made to stay the payment out of Court of a fund, terms will be imposed on the appellant to pay the difference between the actual income earned by the fund, and four per cent. interest, and to make good any difference between the highest market price of the investment at any time from then until the day of hearing of the appeal, and the market price on that day: *Bradford v. Young*, 28 Ch. D. 18; *Brewer v. York*, 20 Ch. D. 669. An appeal upon a question of law is not in general a ground for staying the trial of issues of fact: *Re J. B. Palmer*, 22 Ch. D. 88.

*Dismissal of action.*—Where an action has been dismissed, there can, strictly speaking, be no stay of proceedings: for the Court of First Instance, being *functus officio*, can do nothing: *Galloway v. Corporation of London*, 3 De G., J. & S. 59. In such case an application may be made at once to the Court of Appeal, which in a proper case will grant an injunction to keep things *in statu quo* pending an appeal: *Wilson v. Church*, 11 Ch. D. 576; but mere proceedings for costs may, it seems, be stayed by the Court below: *Otto v. Linford*, 18 Ch. D. 394.

*Costs.*—The costs of an application to stay are usually borne by the applicant: *Cooper v. Cooper*, 2 Ch. D. 492; but the Court has a discretion, and in a proper case will depart from the rule: *Adair v. Young*, 11 Ch. D. 136.



*House of Lords appeals.*—Application for a stay of proceedings pending an appeal to the House of Lords must be made to the Court of Appeal: *The Khe-dive*, 5 P. D. 1; *Hamill v. Lilley*, 19 Q. B. D. 83.

As to when, and on what terms, proceedings will be stayed in the case of an appeal to the House of Lords, see *Grant v. Banque Franco-Egyptienne*, 3 C. P. D. 202; *Morgan v. Elford*, 4 Ch. D. 352; *Wilson v. Church*, 12 Ch. D. 454; *Polini v. Gray*, 12 Ch. D. 438 (continuation of injunction pending appeal); *Brewer v. York*, 20 Ch. D. 669.

A stay will not be granted to give time to a party to consider whether he will appeal: *Webber v. L. & B. Ry.*, 51 L. J., Q. B. 154.

The Court will not stay execution for costs pending an appeal to the House of Lords on payment of the amount into Court, without the inability of the respondent to repay the amount, or other special circumstances, being shown: *Barker v. Lavery*, 14 Q. B. D. 769. An order for production of documents was stayed on the terms that the appellants should present their appeal within one week, and bring the deeds into Court: *Emmerson v. Ind*, 55 L. J., Ch. 903, at p. 905.

*Admiralty actions.*—The practice as to staying execution pending an appeal to the House of Lords in actions in the Q. B. D., applies to Admiralty actions: *The Annot Lyle*, 11 P. D. 114.

17. Wherever under these Rules an application may be made either to the Court below or to the Court of Appeal, or to a Judge of the Court below or of the Court of Appeal, it shall be made in the first instance to the Court or Judge below.

*Effect of Rule.*—This rule does not take away the jurisdiction given to the C. A. by r. 16, but only requires that it shall not be exercised till an application has been first made to the Court below. The application to the C. A. to stay proceedings when an order for that purpose has been refused by the Court below, is not properly an appeal motion, and need not be brought within twenty-one days from the refusal: *Cropper v. Smith*, 24 Ch. D. 305.

18. Every application to a Judge of the Court of Appeal shall be by motion, and the provisions of Order LII. shall apply thereto.

19. On an appeal from the High Court, interest for such time as execution has been delayed by the appeal shall be allowed unless the Court or a Judge otherwise orders, and the taxing-officer may compute such interest without any order for that purpose.

This rule was introduced in 1883. It only operates where execution is stayed.

Order LVIII.  
rr. 16—19.

881.  
Application,  
when made to  
either Court.  
[O. LVIII.  
r. 17.]

882.  
Application to  
Appeal  
Judge.  
[O. LVIII.  
r. 18.]

883.  
Allowance of  
interest where  
execution  
stayed.

## ORDER LIX.

### DIVISIONAL COURTS.

1. The following proceedings and matters shall continue to be heard and determined before Divisional Courts; but nothing herein contained shall be construed so as to take away or limit the power of a single Judge to hear and determine any such proceedings or matters in any case in which he has heretofore had power to do so, or so as to require any interlocutory proceeding therein heretofore taken before a single Judge to be taken before a Divisional Court:—

(a.) Proceedings on the Crown side of the Queen's Bench Division; Crown paper.

w.

G G

Order LIX.  
r. 1.

884.  
Proceedings to  
be taken be-  
fore Divisional  
Courts.  
[O. LVIIa.  
r. 1.]



Order LIX.  
rr. 1, 2.

Registration  
appeals.  
County Court  
appeals.  
Revenue cases.  
Where no ap-  
peal.  
Railway Com-  
missioners'  
cases.

- (b.) Appeals from Revising Barristers, and proceedings relating to Election Petitions, Parliamentary and Municipal ;
- (c.) Appeals under section 6 of the County Courts Act, 1875 ;
- (d.) Proceedings on the Revenue side of the Queen's Bench Division ;
- (e.) Proceedings directed by any Act of Parliament to be taken before the Court, and in which the decision of the Court is final ;
- (f.) Cases stated by the Railway Commissioners under the Act 36 & 37 Vict. c. 48 ;

By the Railway and Canal Traffic Act, 1888 (51 & 52 Vict. c. 25), a new commission was established, styled the Railway and Canal Commission. All proceedings for review of a decision of the new commission are to be by appeal to the Court of Appeal : s. 17 (2).

*Habeas corpus.*

- (g.) Cases of *Habeas Corpus*, in which a Judge directs that an order *nisi* for the writ, or the writ be made returnable before a Divisional Court ;

Special case by  
consent.

- (h.) Special cases where all parties agree that the same be heard before a Divisional Court ;

As to special cases, see O. XXXIV., *ante*, p. 274.

Appeals from  
chambers.

- (i.) Appeals from Chambers in the Queen's Bench Division ;

As to appeals from Chambers in Q. B. D., see O. LIV., rr. 21—24, *ante*, pp. 398, 399.

New trials.

- (j.) Applications for new trials where there has been a trial with a jury.

As to applications for new trial, see O. XXXIX., *ante*, p. 328.

*Divisional Courts.*—As to Divisional Courts, see S. C. Jud. Act, 1873, ss. 40, 43, *ante*, pp. 37, 38 ; App. Jur. Act, 1876, s. 17, *ante*, p. 89 ; S. C. Jud. Act, 1884, s. 4, *ante*, p. 114.

This rule substantially reproduces the repealed O. LVIIa., r. 1.

*Appeal, where appellant absent at hearing in Divisional Court.*—If a party appeals to a Divisional Court, and does not appear to support his appeal, and judgment is given against him in his absence, the Court of Appeal will not entertain an appeal from the judgment of the Divisional Court: *Walker v. Budden*, 5 Q. B. D. 267.

885.

Where pro-  
ceedings after  
trial cannot  
betaken before  
Judge who  
tried  
[O. LVIIa.  
r. 2.]

2. Where, by sect. 17 of the Appellate Jurisdiction Act, 1876, or by these Rules, any application ought to be made to, or any jurisdiction exercised by the Judge by whom a cause or matter has been tried, if such Judge shall die or cease to be a Judge of the High Court, or if such Judge shall be a Judge of the Court of Appeal, or if for any other reason it shall be impossible or inconvenient that such Judge should act in the matter, the President of the Division to which the cause or matter belongs may either by a special order in any cause or matter, or by a general order applicable to any class of causes or matters, nominate some other Judge to whom such application may be made, and by whom such jurisdiction may be exercised.

This rule substantially reproduces r. 2 of the repealed O. LVIIa. Compare, as to the power to transfer actions from the Judges or Masters to whom they have been assigned, O. V., rr. 7, 8, and 9, *ante*, p. 138 ; O. XLIX., rr. 1—4, *ante*, pp. 367—369. As to the power of one Judge to sit for another, see S. C. Jud. Act, 1884, ss. 5, 6, *ante*, p. 115.

3. Where a compulsory reference to arbitration has been ordered, any party to such reference may appeal from the award or certificate of the arbitrator or referee upon any question of law; and on the application of any party the Court may set aside the award on any ground on which the Court might set aside the verdict of a jury. Such appeal shall be to a Divisional Court who shall have power to set aside the award or certificate, or to remit all or any part of the matter in dispute to the arbitrator or referee, or to make any order with respect to the award or certificate or all or any of the matters in dispute that may be just.

Order LIX.  
rr. 3—5.

886.

Appeal in arbitrations to Divisional Court.

*Effect of Rule.*—This rule was introduced in 1883. Formerly, where a compulsory reference to arbitration had been ordered, the decision of the arbitrator on a point of law was final unless the arbitrator thought fit to state a case under s. 5 of the C. L. P. Act, 1854. The provisions of the present rule place the law as to referees under the Judicature Acts and arbitrators on the same footing. For the future in every case of compulsory reference, whether to a referee or arbitrator, an appeal will lie upon any question of law. See, as to referees and appeals from them, O. XXXVI., rr. 50, 52, 54, 55; O. XL., r. 6.

By S. C. Jud. Act, 1884, s. 8 (*ante*, p. 116), the provisions of S. C. Jud. Act, 1873, s. 45, as to certain appeals therein mentioned, are extended to appeals in compulsory references to arbitration.

Where a reference is by consent the law remains as it was before the present rules.

As to when a reference to arbitration can be ordered compulsorily, see *Clow v. Harper*, 3 Ex. D. 198; *Knight v. Coales*, 19 Q. B. D. 296.

4. Every Judge of the High Court of Justice for the time being shall be a Judge to hear and determine appeals from Inferior Courts, under section 45 of the principal Act. All such appeals (except Probate and Admiralty Appeals from Inferior Courts, and from justices, which shall be to a Divisional Court of the Probate Divorce and Admiralty Division), shall be entered in one list by the officers of the Crown Office Department of the Central Office, and shall be heard by such Divisional Court of the Queen's Bench Division as the Lord Chief Justice of England shall from time to time direct.

887.

Appeals from Inferior Courts.  
[Cf. O. LVIII. r. 19.]

This rule is taken from the repealed O. LVIII., r. 19, the provisions of which it reproduces with some alterations. The provision that appeals from inferior Courts and justices in Admiralty cases are to be heard by a Divisional Court of the P. D. and A. Division was introduced in 1883.

See S. C. Jud. Act, 1873, s. 45, *ante*, p. 38, and notes thereto.

5. On an appeal from an award of justices or their umpire on a dispute with respect to salvage, the appellant shall within *ten days* after the date of the award, give notice in writing to the justices to whom the matter was referred of his intention to appeal, and shall within *twenty days* from the date of the award give to the opposite party notice in writing of motion to appeal, and shall file an affidavit of the service of the said notice of appeal and of the said notice of motion, together with copies of the said notices, and no other proceeding shall be necessary for the institution of the said appeal.

888.

Appeals from justices in salvage cases.

The provisions of this rule were introduced in 1883, and simplify the procedure on appeals from justices in salvage cases. For the practice, see Bruce and Williams' Admiralty Practice, ed. of 1886, pp. 522—534.

As to the jurisdiction on appeals from justices, see M. S. Act, 1854, s. 464.



**Order LIX.**  
**rr. 6—10.**

889.

Copies of evidence in Court below.

6. In such appeal as in the last preceding Rule mentioned, if the same is to be heard without any pleadings and without any evidence other than that which was adduced before the Court appealed from, the appellant shall, within *ten days* from the filing of the proceedings and award, leave in the Admiralty Registry printed copies thereof; and if he shall not do so, the Court may on the application of the respondent dismiss the appeal with costs.

This rule is taken from No. 97 of the Admiralty Rules of 1859. See note to last rule.

Powers of High Court on Inferior Court appeals.

7. On any motion by way of appeal from an Inferior Court, the Court to which any such appeal may be brought shall have power to draw all inferences of fact which might have been drawn in the Court below, and to give any judgment and make any order which ought to have been made. No such motion shall succeed on the ground merely of misdirection or improper reception or rejection of evidence, unless, in the opinion of the Court, substantial wrong or miscarriage has been thereby occasioned in the Court below.

This rule was r. 15 of R. S. C., Oct., 1884.

This rule gives to any Court to which an appeal from an inferior Court is brought the powers which the Court of Appeal exercises in appeals from the High Court.

Power to High Court to use evidence other than Judge's notes.

8. On any motion by way of appeal from an Inferior Court, the Court to which any such appeal may be brought shall have power, if the notes of the Judge of such Inferior Court are not produced, to hear and determine such appeal upon any other evidence or statement of what occurred before such Judge which the Court may deem sufficient.

This rule was r. 16 of R. S. C., Oct., 1884.

Rules to apply to all appeals from Inferior Courts.

9. The following Rules of this Order shall apply to appeals to the Queen's Bench Division from County Courts and other Inferior Courts of Record of civil jurisdiction in all proceedings other than proceedings in bankruptcy.

These rules were introduced in December, 1885, under the powers conferred by s. 23 of S. C. Jud. Act, 1884, *ante*, p. 120. They supersede the hitherto existing practice of appealing by special case or rule *nisi*, and substitute a uniform practice by notice of motion similar to appeals to the Court of Appeal.

*Remitted actions.*—These rules do not apply to actions remitted to the County Court under 19 & 20 Vict. c. 108, s. 26. Appeals from the decision of a County Court Judge in these cases are governed by the old practice of applying for rules *nisi* within four days: *Hughes v. Finney*, 19 Q. B. D. 522.

Appeal to be by notice of motion, and no rule *nisi* necessary.

10. Every such appeal shall be by notice of motion, and no rule *nisi* or order to show cause shall be necessary. The notice of motion shall state the grounds of the appeal, and whether all or part only of the judgment, order, or finding is complained of. The notice of motion shall be an *eight days'* notice, and shall be served on every party directly affected by the appeal entered.

See note to last rule.

*Appeal by special case abolished.*—Appeals from County Courts must now be by notice of motion, notwithstanding 13 & 14 Vict. c. 61, ss. 14, 15, which gave an appeal by special case: *Reg. v. Kettle*, 17 Q. B. D. 761; except perhaps where a statute has given an appeal by special case to the High Court from an inferior Court under special circumstances: *Wilkinson v. Jagger*, 20 Q. B. D. 423. An appeal against the decision of a County Court Judge under the



Friendly Societies Act, 1875 (38 & 39 Vict. c. 60), is properly brought by notice of motion and not by special case: *Wilkinson v. Jagger* (*ubi sup.*).

Order LIX.  
rr. 10—16.

*Appeal from Mayor's Court.*—Where the sum sought to be recovered in the Mayor's Court exceeds £20, and a motion to set aside the verdict and judgment is made in the High Court, it is not necessary that the leave of the Judge of the Mayor's Court should be obtained: *Eder v. Levy*, 19 Q. B. D. 210.

11. Every appeal shall be entered at the Crown Office Department of the Central Office, and the entry shall be made by lodging a copy of the notice.

Appeal to be entered at Central Office.

12. The notice of motion shall be served and the appeal entered within *twenty-one days* from the date of the judgment, order, or finding complained of; such period shall be calculated from the time at which the judgment or order is signed, entered, or otherwise perfected, or from the time at which the finding or any refusal is made or given.

Notice of motion to be served within twenty-one days from time of judgment.

*Date from which time runs.*—In an action tried in the County Court an appeal will not lie against the decision of the County Court Judge on an application for a new trial; so that the time within which the unsuccessful party may appeal to the Queen's Bench Division begins to run from the date of the judgment at the trial, and not from the date of the Judge's decision on the application for a new trial: *McHardy v. Liptrott*, 19 Q. B. D. 151; and see *Morris v. Lowe*, 34 W. R. 45; and *Jacobs v. Dawkes*, 56 L. J., Q. B. 446.

When the finding of a jury in a County Court is complained of, the twenty-one days are to be calculated from the time when the verdict was given, although judgment was not given till subsequently: *Rawnsley v. L. & F. Ry. Co.*, 35 W. R. 771.

13. It shall be the duty of the Master of the Crown Office Department forthwith, upon the entry of the appeal, to apply on behalf of the High Court to the Judge of the Inferior Court from which the appeal is brought for a copy of the notes of the evidence given, and for a statement of his judgment or finding on any question of law under appeal. Either party shall be entitled, upon payment of the proper fee, to obtain from the Crown Office Department an office copy of such notes and statement.

Master of the Crown Office to apply for copy of evidence, &c., in Inferior Court.

If no notes of the Judge of the Inferior Court are forthcoming, the Appeal Court can act on other evidence: see r. 8, *supra*.

14. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the Inferior Court shall so order or unless within *ten days* after the decision a deposit shall be made of or security given to the satisfaction of such Inferior Court for a sum to be fixed by the said Court, not exceeding the amount of the money or the value of the property affected by the judgment, order or finding appealed from.

Appeal no stay of execution.

15. Every appeal from an Inferior Court shall be entered in the proper list for hearing on such days as the Lord Chief Justice of England may direct, and shall come on to be heard in its order, unless the High Court shall otherwise direct.

Appeals to be entered in list.

16. The High Court shall have power to extend the time for appealing, or to amend the grounds of appeal, or to make any other order on such terms as the Court shall think just, to ensure the determination on the merits of the real questions in controversy between the parties.

High Court to have powers to extend time and amend.

**Order LIX.**  
**r. 17.**

Rules as to  
appeals from  
High Court to  
Court of  
Appeal to  
apply to ap-  
peals from In-  
ferior Courts to  
High Court.

**17.** Subject to these Rules, the Rules for the time being in force with respect to appeals from the High Court to the Court of Appeal shall, so far as practicable, apply to and govern appeals from County Courts and other Inferior Courts of Record of civil jurisdiction to the High Court.

See O. LVIII., *ante*, p. 434.

Under this rule an insolvent next friend of an infant plaintiff was ordered to give security for the costs of an appeal from the County Court: *Swain v. Follows*, 18 Q. B. D. 585.

**Order LX.**  
**rr. 1—4.**

890.  
Officers of  
Divisions.  
[*Cf.* O. LX.  
r. 1.]

**ORDER LX.**

**OFFICERS.**

**1.** All officers who at the time when these Rules come into operation are attached to the Chancery Division of the High Court shall remain attached to the said Division; and all officers who at the time aforesaid are attached to the Queen's Bench Division shall remain attached to the said Division; and all officers who at the time aforesaid are attached to the Probate Divorce and Admiralty Division shall remain attached to the said Division.

This and the next two following rules reproduce, with merely necessary alterations, the provisions of the repealed O. LX.

See, as to officers and offices, Part V. of S. C. Jud. Act, 1873, *ante*, pp. 54—59 *et seq.*, and the definition of "proper officer" in O. LXXI., *post*, p. 514.

891.  
Appeals.  
[O. LX. r. 2.]

**2.** Officers attached to any Division shall follow the appeals from the same Division, and shall perform in the Court of Appeal analogous duties in reference to such appeals as the Registrars and officers of the Court of Chancery usually performed as to rehearings in the Court of Appeal in Chancery, and as the Masters and officers of the Courts of Queen's Bench, Common Pleas, and Exchequer respectively performed as to appeals heard by the Court of Exchequer Chamber.

892.  
Abolished  
offices.  
Master of  
Supreme  
Court.  
[O. LX. r. 3.]

**3.** The office of Master of the Supreme Court of Judicature shall be deemed to be substituted for the several offices specified in the first part of the first schedule to the Supreme Court of Judicature (Officers) Act, 1879, and all enactments and documents referring to any of those offices, or to any of the persons holding them, shall, unless the context otherwise requires, be construed and have effect accordingly.

See s. 27 of S. C. Jud. (Officers) Act, 1879, *ante*, p. 102.

893.  
Recognizances  
to be given to  
chief clerks.

**4.** Where by the practice of the Chancery Division, recognizances are required to be given, such recognizances shall be given to the two senior Chief Clerks for the time being of the Judge to whom the cause or matter is assigned; and when the same are, by any judgment or order, directed to be vacated, the proper officer shall,

on due notice thereof, attend one of the said Chief Clerks, who shall thereupon vacate such recognizances in the usual manner.

Order LX.  
r. 4.

The provisions of this rule were introduced in 1883.

Formerly, under C. O. XLII., rr. 13 and 14, recognizances in Chancery were given to the Master of the Rolls and Senior Vice-Chancellor, and vacated before the Master of the Rolls.

For form of recognizance, see Appendix L, No. 21, *post*, p. 648.

ORDER LXI.

Order LXI.  
r. 1.

CENTRAL OFFICE.

1. The Central Office shall, for the convenient despatch of business, be divided into the departments specified in the first column of the following scheme, and the business of the Office shall be distributed among the departments in accordance with that scheme, and shall be performed by the several officers and clerks in the said office who are now charged with the same or similar duties, and by such others as may from time to time be appointed by lawful authority for that purpose.

894.

Departments  
in Central  
Office.

[Cf. O. LXa.  
r. 1.]

SCHEME.

Name of Department.	Business.
1. Writ, appearance, and judgment.	<p>The sealing and issue of writs of summons for the commencement of actions.</p> <p>The entry in the cause-book of writs of summons, appearances, and judgments.</p> <p>The sealing and issue of notices for service under O. XVI., r. 48.</p> <p>The receipt and filing of pleadings and notices delivered on entry of judgment.</p> <p>The transaction of all business heretofore conducted in the Record and Writ Office, except such part thereof as is transacted in the Record Department.</p>
2. Summons and order . .	<p>The issue of summonses in the Queen's Bench Division, and the drawing up of all orders made either in Court or in Chambers in that Division.</p>
3. Filing and Record . .	<p>The filing of all affidavits to be filed in the Central Office, and all depositions to be used in the Chancery Division, and such other documents as may from time to time be directed by the Masters to be filed, and the making and examination of office copies of documents filed in the Department.</p> <p>The custody of all deeds and documents ordered to be left with the Masters.</p> <p>The business heretofore performed in the Report Office under the direction and control of the Clerks of Records and Writs.</p>
4. Taxing . . . . .	<p>The taxation of costs in the Queen's Bench Division, except such costs as have heretofore been taxed in the Queen's Remembrancer's Office or the Crown Office.</p>



Order LXI.  
rr. 1—5.

SCHEME—continued.

Name of Department.	Business.
5. Enrolment . . . . .	The business heretofore performed in the Enrolment Office.
6. Judgments and married women's acknowledgments.	The registry of judgments, execution, &c., and the registry of acknowledgments of deeds by married women.
7. Bills of Sale . . . . .	The registry of bills of sale and other duties connected therewith.
8. Queen's Remembrancer	The business heretofore performed in the Queen's Remembrancer's Office.
9. Crown Office . . . . .	The business heretofore performed in the Crown Office.
10. Associates . . . . .	The business heretofore performed in the Associates' Offices.

*Effect of Order.*—A considerable part of this Order was introduced in 1883. It contains the provisions relating to the Central Office which were contained in the repealed O. LXa., and also a number of provisions relating to documents and their custody, taken from the Consolidated Orders. The provisions relating to schemes under the Railway Companies Act, 1867, which were formerly contained in the repealed O. LXIV., have been placed in this Order. See rr. 10, 11.

1a. [By this rule, introduced 17 Dec. 1887 (*post*, p. 516), the Court Order Department of the Summons and Order Department is amalgamated with the Associates' Department; and the Queen's Remembrancer's Department is amalgamated with the Judgments and Married Women's Acknowledgments Department.]

895.  
Rota of  
Masters.  
[Cf. O. LXa.  
r. 2.]

2. It shall be the special duty of one of the Masters to be present at, and control the business of, the Central Office, and to give the necessary directions with respect to questions of practice and procedure relating to the business thereof. The Masters shall select five of their number to discharge this duty in turn, according to a rota to be fixed by themselves, and each of such Masters according to his turn shall discharge such duty daily for a period of not less than one month at a time.

See S. C. Jud. (Officers) Act, 1879, ss. 7, 12, *ante*, pp. 96, 98.

896.  
Attendance of  
Masters for  
taxation.  
[O. LXa. r. 3.]

3. A sufficient number of Masters, not being less than three, shall, except in vacation, attend each day at the Central Office to tax costs. In vacation one Master shall attend daily for that purpose. The taxing Masters shall be selected according to a rota to be fixed by the Masters.

897.  
Announce-  
ment of  
regulations.

4. The arrangements made under the two last preceding Rules shall be publicly announced in such manner as the Lord Chief Justice of England shall from time to time direct.

898.  
Administra-  
tion of oaths  
by officers.  
[O. LXa. r. 4.]

5. Every Master, and every first and second class clerk in the Filing and Record Department, shall, by virtue of his office, have authority to take oaths and affidavits in the Supreme Court.

6. The official seals to be used in the Central Office shall be such as the Lord Chancellor from time to time directs.

Order LXI.  
rr. 6—14.

7. All copies, certificates, and other documents appearing to be sealed with a seal of the Central Office, shall be presumed to be office copies or certificates or other documents issued from the Central Office, and if duly stamped may be received in evidence, and no signature or other formality, except the sealing with a seal of the Central Office, shall be required for the authentication of any such copy, certificate, or other document.

899.  
Seals.  
[O. LXa. r. 5.]  
900.  
Authentica-  
tion of  
documents.  
[O. LXa. r. 5.]

8. It shall not be necessary to enrol any judgment or order, whether dated before or since the commencement of the principal Act.

901.  
Enrolment of  
judgments un-  
necessary.

9. All deeds which by any statute or statutory rule are directed or permitted to be enrolled in any of the Courts whose jurisdiction has been transferred to the High Court of Justice may be enrolled in the Enrolment Department of the Central Office.

902.  
Enrolment of  
deeds.  
[O. LXa. r. 6.]

*Clerk of Enrolments.*—See S. C. Jud. (Officers) Act, 1879, s. 7, *ante*, p. 96.

10. A scheme under the Railway Companies Act, 1867, shall be enrolled in the Enrolment Department of the Central Office.

*Railway Companies Act, 1867.*—See Dan. Pr., pp. 2174—2188; Dan. Forms, pp. 918—925; 2 Seton, pp. 1451—1454; Morgan, pp. 167—177.

903.  
Enrolment of  
scheme under  
Railway Act,  
1867.

11. A scheme under the Act in Rule 10 mentioned shall not be enrolled unless notice of the order confirming it has at least once in every entire week, reckoned from Sunday morning to Saturday evening, which elapses between the pronouncing of the order and the expiration of thirty days from the pronouncing thereof, been inserted in such two newspapers as shall have been appointed by the Judge for the insertion of advertisements under the order made pursuant to that Act, nor unless the newspapers containing those notices are produced to the proper officer when the scheme is presented for enrolment.

[O. LXIV.  
r. 2.]  
904.  
Condition of  
enrolment of  
scheme.  
[O. LXIV.  
r. 3.]

This rule is taken from Ord., 24th Jan., 1868, r. 22.

12. All acknowledgments required for the purpose of enrolling any deed or other document may be made before the Clerk of Enrolments or before a Master, as occasion may require.

905.  
Acknowledg-  
ments for  
enrolling  
deeds.

This rule is taken from C. O. I., r. 40.

13. The records of all deeds and recognizances enrolled shall be sent by the Clerk of Enrolments, so long as that office shall continue, or by the proper officer of the Enrolment Department, to the Public Record Office, Rolls Yard, within *two years* from the time of the enrolment thereof.

906.  
Records of  
deeds enrolled  
where sent.

This rule is taken from C. O. I., r. 41.

14. No recognizance shall be enrolled after *six months* from the acknowledgment thereof, except under special circumstances, and by an order made by the Court or a Judge upon motion for the enrolment thereof after that time.

907.  
Limit of time  
for enrolment  
of recogni-  
zance.

This rule is taken from C. O. XLII., r. 12. Cf. O. LX., r. 4, *ante*, p. 454.

**Order LXI.  
rr. 15—20.**

908.

Petitions, &c.  
to be filed  
before orders  
thereon passed.

15. No order made on a petition, and no order to make a submission to arbitration, or an award, an order of the Court, and no judgment or order wherein any written admissions of evidence are entered as read, shall be passed until the original petition, submission to arbitration, or award, or written admissions of evidence, shall have been filed in the Central Office, or, where the proceedings are taken in a District Registry, in the District Registry, and a note thereof made on the judgment or order by the proper officer.

This rule is taken from C. O. XXIII., r. 23, and extends the provisions of that Order to District Registries.

As to what is a submission to arbitration which can be made an order of Court, see *Re Dawdy*, 15 Q. B. D. 426.

In a case before V.-C. Bacon, it was held that it is the proper course to make an award, and not a submission to arbitration, an order of Court: *Re Rolfe*, 28 Sol. J. 165; but see *Jones v. Jones*, 14 Ch. D. 593; *Re Gifford and Bury Town Council*, 20 Q. B. D. 368.

909.

Date of filing  
to be marked  
on document.

16. Upon every pleading or other proceeding which is filed in the Central Office, the date of filing the same shall be printed or written.

This rule is taken from C. O. I., r. 45.

910.

Indexes of  
filed docu-  
ments.

17. Proper indexes or calendars to the files or bundles of all documents filed at the Central Office shall be kept, so that the same may be conveniently referred to when required; and such indexes or calendars and documents shall, at all times during office hours, be accessible to the public on payment of the usual fee.

This rule is taken from C. O. I., r. 46. By the S. C. Funds Rules, 1886, r. 105 (*post*, p. 756), an index is required to be kept at the Central Office of all documents relating to money in Court required by those rules to be filed there.

911.

Books to be  
kept at Central  
Office, and  
entries therein.

18. There shall also be entered in proper books kept for the purpose the time when any certificate is delivered at the Central Office to be filed, with the name of the cause and the date of the certificate; and the like entry shall be made of the time of delivery of every other document filed at the Central Office; and such books shall, at all times during office hours, be accessible to the public on payment of the usual fee.

This rule is taken from C. O. I., r. 47.

912.

Distinguishing  
marks on  
documents.

19. Every judgment, order, certificate, petition, or document made, presented, or used in any cause or matter, shall be distinguished by having plainly written or stamped on the first page thereof the year, the letter, and the number by which the cause or matter is distinguished in the books kept at the Central Office.

This rule is taken from C. O. I., r. 48.

913.

Entries of  
dates in cause-  
books.

20. There shall also be entered in the Cause-Books, the date of every judgment, order, and certificate made in every cause or matter.

This rule is taken from C. O. I., r. 49.



**21.** The entry of every judgment and order in such Cause-Books in the Chancery Division shall contain a reference to the date and folio of the Registrar's book in which the judgment or order has been entered.

This rule is taken from C. O. I., r. 50.

Order LXI.  
rr. 21—26.

914.

Reference in  
cause-books to  
Registrar's  
books.

915.

Hours for  
registration of  
judgments, &c.  
[Cf. O. LXa.  
r. 7.]

**22.** The Registrar of Judgments shall not receive any memorandum of a judgment, execution, *lis pendens*, order, rule, annuity, Crown debt, or other incumbrance, or any memorandum of satisfaction relating to the same, for registration, *after the hour of two in the afternoon*.

*Lis pendens*.—Where an action is improperly registered as a *lis pendens* against a person who is not a party thereto, the Court has jurisdiction to vacate the registration, under 30 & 31 Vict. c. 47, s. 2, notwithstanding that the action is being prosecuted *bonâ fide* by the plaintiff as against the defendant: *Schofield v. Solomon*, 52 L. T. 679. As to when registration of a creditor's action for administration as a *lis pendens* gives the creditor priority over a mortgagee or purchaser from a devisee under the will, see *Price v. Price*, 35 Ch. D. 297.

**23.** The Clerk of Enrolments and each of the following Registrars, namely—

- (a) The Registrar of Bills of Sale;
- (b) The Registrar of Certificates of Acknowledgments of Deeds by Married Women;
- (c) The Registrar of Judgments;

shall, on a request in writing giving sufficient particulars, and on payment of the prescribed fee, cause a search to be made in the registers or indexes under his custody, and issue a certificate of the result of the search.

See, as to bills of sale, r. 25, *infra*. For form, see *post*, p. 790.

**24.** For the purpose of enabling all persons to obtain precise information as to the state of any cause or matter, and to take the means of preventing improper delay in the progress thereof, the proper officer shall at the request of any person, whether a party or not to the cause or matter inquired after, but on payment of the usual fee, give a certificate specifying therein the dates and general description of the several proceedings which have been taken in such cause or matter in the Central Office.

This rule is taken from C. O. I., r. 53. See note to rule 20, *supra*.

**25.** The Masters shall execute the office of the Registrar for the purposes of the Bills of Sale Act, 1878, and the Bills of Sale Act, 1878, Amendment Act, 1882, and any one of the Masters may perform all or any of the duties of the Registrar.

See R. S. C. Bills of Sale Acts, 1878 and 1882, as to registration of bills of sale, *post*, p. 795.

916.  
Searches.  
[O. LXa.  
r. 8a.]

917.  
Certificates of  
proceedings to  
be given.

918.  
Master to be  
Registrar of  
bills of sale.  
[Cf. O. LXa.  
r. 9.]

**26.** A memorandum of satisfaction may be ordered to be written upon a registered copy of a bill of sale, on a consent to the satisfaction, signed by the person entitled to the benefit of the bill of

919.  
Memorandum  
of satisfaction

**Order LXI.  
rr. 26—32.**

of bill of sale  
on consent.

[O. LXa.  
r. 10.]

920.

Memorandum  
of satisfaction  
where no con-  
sent.

[O. LXa.  
r. 10.]

sale, and verified by affidavit, being produced to the Registrar, and filed in the Central Office.

For form of summons under this rule, see *post*, p. 631.

**27.** Where the consent in the last preceding Rule mentioned cannot be obtained, the Registrar may, on application by summons, and on hearing the person entitled to the benefit of the bill of sale, or on affidavit of service of the summons on that person, and in either case on proof to the satisfaction of the Registrar that the debt (if any) for which the bill of sale was made has been satisfied or discharged, order a memorandum of satisfaction to be written upon a registered copy thereof.

See 41 & 42 Vict. c. 31, s. 15.

921.

Restrictions on  
removal of  
documents.

[O. LXa.  
r. 11.]

**28.** No affidavit or record of the Court shall be taken out of the Central Office without the order of a Judge or Master, and no *sub-pœna* for the production of any such document shall be issued.

Cf. C. O. I., r. 42.

By O. XXXVII., r. 4, office copies are made evidence to the same extent as the originals would be evidence.

922.

Expenses of  
officer attend-  
ing with  
record.

**29.** Any officer of the Central Office, being required to attend with any record or document at any assizes or at any Court or place out of the Royal Courts of Justice, shall be entitled to require that the solicitor or party desiring his attendance shall deposit with him a sufficient sum of money to answer his just fees, charges, and expenses in respect of such attendance, and undertake to pay any further just fees, charges, and expenses which may not be fully answered by such deposit.

This rule is taken from C. O. I., r. 43.

923.

Deposit of  
deeds, &c.

**30.** Where any deeds or other documents are ordered to be left or deposited, whether for safe custody or for the purpose of any inquiry in Chambers, or otherwise, the same shall be left or deposited in the Central Office, and shall be subject to such directions as may be given for the production thereof.

This rule is taken from C. O. XLII., r. 3.

924.

Transmission  
and filing of  
certificates, &c.

**31.** All certificates of the Chief Clerk of a Judge and all petitions and written admissions of evidence whereon any order is founded, and all submissions to arbitration made orders of the Court, shall be transmitted to and left at the Central Office, to be there filed or preserved. And all office copies thereof, or of any part thereof that may be required, shall be ready to be delivered to the party requiring the same within *forty-eight hours* after the same shall have been bespoken.

This rule is taken from C. O. I., r. 44.

925.

Forms.  
[O. LXa.  
r. 12.]

**32.** The Forms contained in the Appendices shall be used in or for the purposes of the Central Office, with such variations as circumstances may require.

For forms, see the Appendices.

**33.** The Masters may from time to time prescribe the use in or for the purpose of the Central Office of such modified or additional forms as may be deemed expedient.

For the practice rules drawn up by the Masters, see *post*, p. 695.

Order LXI.  
r. 33.

926.

Power of  
Masters to  
prescribe  
Forms.

[O. LXa.  
r. 12.]

Order LXII.  
rr. 1—3.

ORDER LXII.

REGISTRARS OF THE CHANCERY DIVISION.

**1.** The Registrars of the Chancery Division shall attend the Judges of the Chancery Division, and the Court of Appeal upon the hearing of appeals from the Chancery Division, in rotation as they may arrange amongst themselves, and in default of arrangement week by week on alternate days.

This Order was introduced in 1883.

This rule is taken from C. O. I., r. 17.

As to Registrars in the Chancery Division, see Dan. Pr., pp. 800 *et seq.*; Dan. Forms, pp. 356—358; 2 Seton, pp. 1545 *et seq.*

*Appeals in Liverpool and Manchester District Registry Cases.*—The Registrars, under instructions received from the Lord Chancellor, draw up orders of the C. A. in cases proceeding in the District Registries of Manchester and Liverpool and assigned to Kekewich, J.

927.

Attendance  
and rotation of  
Registrars.

**2.** All judgments and orders drawn up by the Registrars, or by the Chief Clerks to the Judges, and all præcipes for attachments, and such other documents (if any) as, according to the present practice or the practice for the time being, ought to be entered by the entering clerks to the Registrars, shall be entered by them without abbreviations, and in a clear and legible hand, under the direction of the Senior Registrar for the time being, within *one clear day* after the same shall be left for entry, and all such entries shall be examined by one of the said entering clerks, and be marked with his initials to denote such examination.

928.

Entries of  
judgments and  
orders.

This rule is taken from C. O. I., r. 18.

*Entry of judgments.*—See O. XLI., *ante*, p. 336.

*Orders to be acted on in Pay Office.*—As to the duties of the clerks of entries with respect to orders to be acted on in the Pay Office, see rule 24 of the S. C. Funds Rules, 1886, *post*, p. 731.

*Necessity for entry.*—“No proceedings can be taken upon a judgment or order not entered, and if any are taken, they are irregular and voidable; even though the omission to enter the judgment or order has been occasioned by the mistake of the entering clerk, and not through any neglect of the party (*Tolson v. Jarvis*, 8 Beav. 364; *Ballard v. Tomlinson*, 31 W. R. 563)”: Dan. Pr., p. 810.

**3.** Proper calendars or indexes of such entries shall be made by the entering clerks, so that the same may be conveniently referred to when required, and the calendars or indexes and the books in which the entries are made shall when completed be transmitted to the Filing and Record Department of the Central Office to be there preserved, and shall at all times during office hours be accessible to the public on payment of the usual fee.

929.

Calendars and  
indexes.

This rule is taken from C. O. I., r. 19.



**Order LXII.  
rr. 3—8.**

By rule 105 of the S. C. Funds Rules, 1886, *post*, p. 756, an index is required to be kept at the Central Office of all documents required by those rules to be filed there.

930.

Bespeaking  
judgment or  
order.

4. At the time of bespeaking a judgment or order, the party bespeaking the same shall leave with the Registrar his counsel's brief, and such other documents as may be required by the Registrar for the purpose of enabling him to draw up the same.

This rule is taken from C. O. I., r. 20.

*Documents to be left.*—See Regul., 15 March, 1860; Dan. Pr., pp. 801—804.

*Evidence to be entered.*—See Dan. Pr., pp. 793, 794.

931.

Time for leav-  
ing documents.

5. Every judgment or order shall be bespoken, and the briefs and other documents mentioned in the last preceding Rule shall be left with the Registrar within *seven days* after the judgment or order is pronounced or finally disposed of by the Court or Judge.

This rule is taken from C. O. I., r. 21.

*Orders to be acted on in Pay Office.*—With respect to such orders, the S. C. Funds Rules, 1886, provide as follows:—

[Rule 22. When an order is made dealing in any way with funds in Court or to be brought into Court in accordance with minutes agreed upon by the parties, the solicitor of the party whose duty it is to procure the order to be drawn up and entered shall prepare and lodge with the Registrar or other proper officer, for his consideration, draft lodgment and payment schedules, as the case may be, in the same form as the lodgment and payment schedules to an order, and containing the particulars, so far as the same have been ascertained, which are required by these rules to be contained in the lodgment and payment schedules of the order.]

See *post*, p. 731.

932.

Failure to  
leave docu-  
ments.

6. In case any judgment or order is not bespoken, and the briefs and other requisite documents are not left with the Registrar within the time prescribed by the last preceding Rule, the Registrar may decline to draw up the judgment or order without the leave of the Court or Judge.

This rule is taken from C. O. I., r. 22.

933.

Delivery of  
appointment  
to settle draft.

7. At the time of delivering out the draft of any judgment or order which requires to be settled by the Registrar in the presence of the parties, the Registrar shall deliver out to the party on whose application the draft has been prepared, an appointment in writing of a time for settling the same.

This rule is taken from C. O. I., r. 23.

934.

Notice of  
appointment  
to settle.

8. A notice of the appointment shall be served on the opposite party *one clear day* at least before the time fixed thereby for settling the draft judgment or order, and the party serving the notice, and the party so served, shall attend the appointment, and produce to the Registrar their briefs, and such other documents as may be necessary to enable him to settle the draft.

This rule is taken from C. O. I., r. 24.

*Motion to vary minutes.*—See Dan. Pr., p. 805 ; Dan. Forms, p. 357 ; 2 Seton, p. 1546. A copy of the note in the Registrar's minute book should be produced on the application: *Robinson v. Barton Local Board*, 21 Ch. D. 621. The question to be argued is what was the actual order made, except where something is by consent added to the minutes, or it cannot be ascertained what was the order made, when the action may be put into the paper and argued again: *Mem. W. N.* (1876), 296.

Order LXII.  
rr. 8—13.

9. Service of the notice of appointment shall be effected by leaving it at the place for service of the party to be served, or by transmitting it by post to such party at such place for service. 935.  
Service of notice.

This rule is taken from C. O. I., r. 25.

10. At the time fixed for settling the draft the Registrar shall satisfy himself in such manner as he may think fit that service of the notice of appointment has been duly effected. 936.  
Proof of service.

This rule is taken from C. O. I., r. 26.

11. When the draft judgment or order has been settled by the Registrar, he shall name a time in the presence of the several parties, or else deliver out an appointment in writing of a time for passing the judgment or order, and in the latter case notice of the appointment shall be served on the opposite party in like manner as directed by Rules 8 and 9 of this Order, with reference to an appointment to settle the draft judgment or order. 937.  
Appointment for passing judgment or order.

This rule is taken from C. O. I., r. 27.

*Passing an order.*—A judgment or order is said to be passed when the Registrar has inserted his initials in the margin, at the foot of the last page, as an authority to the clerk of entries to enter it in the Registrar's books: 2 Seton, pp. 1546, 1547 ; Dan. Pr., p. 808.

12. If any party fails to attend the Registrar's appointment for settling the draft of or passing any judgment or order, or fails to produce his briefs and such other documents as the Registrar may require to enable him to settle such draft, or pass such judgment or order, the Registrar may proceed to settle the draft, or pass the judgment or order in his absence, and the Registrar shall be at liberty to dispense with the production of counsels' briefs, and to act upon such evidence as he may think fit of the actual appearance by counsel of the party failing to attend or to produce such documents or papers as aforesaid, or may require the matter to be mentioned to the Court or Judge. 938.  
Failure to attend appointment or produce documents.

This rule is taken from C. O. I., r. 28.

A party not producing his briefs was ordered to do so within a limited time ; in default, the order was directed to be drawn up without production of them: *Yeatman v. Read*, 14 W. R. 123. For form of notice of motion, see Dan. Forms, p. 357.

13. The Registrar may adjourn any appointment for settling the draft of or passing any judgment or order to such time as he may think fit, and the parties who attended the appointment shall be bound to attend such adjournment without further notice. 939.  
Adjournment of appointment.

This rule is taken from C. O. I., r. 31.

**Order LXII.  
rr. 14—18.**

940.

Settlement and  
passing of  
judgment and  
order without  
appointment.

941.

Certifying for  
special allow-  
ance.

**14.** Notwithstanding the preceding Rules of this Order the Registrar shall be at liberty, in any case in which he may think it expedient so to do, to settle and pass the judgment or order, without making any appointment for either purpose and without notice to any party.

This rule is taken from C. O. I., r. 32.

**15.** The Registrar shall, at the time of any attendance before him for the purpose of settling the terms of and passing any judgment or order, if requested to do so by any party, on the ground that it is of a special nature or of unusual length or difficulty, certify, for the information of the taxing officer, whether in his opinion any special allowance ought to be made in taxation of costs in respect thereof.

This rule was introduced in 1883. See O. LXV., r. 27 (11), *post*, p. 490.

942.

Money orders.

**16.** All orders for the payment or transfer of money or securities into Court to the account or credit of the Paymaster-General, and for the payment or transfer of money or securities out of Court by the Paymaster-General, shall be drawn up in conformity with such rules relating thereto as shall be from time to time made under the Court of Chancery Funds Act, 1872, or any Act amending the same.

This rule was introduced in 1883. Since these rules were made, the Supreme Court of Judicature (Funds, &c.) Act, 1883, has been passed, by which one Pay Office has been established for the whole Supreme Court. Rules have been made under that Act, and the Act mentioned in the rule, regulating the proceedings in the Pay Office. See Supreme Court Funds Rules, 1886, *post*, pp. 724—770; and see in particular as to the forms of orders to be acted on in the Pay Office, and rules relating to them, rules 4 to 28.

943.

Lists.

**17.** The Registrars of the Chancery Division shall keep distinct lists of the causes and matters set down to be heard before each Judge of that Division.

This rule is taken from C. O. VI., r. 8.

944.

Answer to and  
orders on peti-  
tions.

**18.** All petitions which require to be answered, shall be answered in the name of the Senior Registrar for the time being, and any orders on petitions which, according to the practice formerly prevailing in the Chancery Division, were drawn up, passed, and entered in the office of the Secretaries of the Master of the Rolls, shall be drawn up, passed, and entered by or under the direction of the Registrars of the Chancery Division.

This rule was introduced in 1883, after the abolition of the office of the Secretary of the Master of the Rolls.

Orders on petitions of course were drawn up in the office of the Rolls' Secretary. As to such petitions, see *Dan. Pr.*, pp. 1561, 1564.

*Liverpool and Manchester District Registries.*—Petitions presented in such registries respectively, requiring answer, must be answered in the name of one of the District Registrars of the same respective registries: *R. S. C.*, May, 1887, *post*, p. 516.



Order LXIII.  
rr. 1—5.

ORDER LXIII.

SITTINGS AND VACATIONS.

1. The sittings of the Court of Appeal and the sittings in London and Middlesex of the High Court of Justice shall be four in every year, viz., the Michaelmas sittings, the Hilary sittings, the Easter sittings, and the Trinity sittings. The Michaelmas sittings shall commence on the 2nd of November and terminate on the 21st of December; the Hilary sittings shall commence on the 11th of January and terminate on the Wednesday before Easter; the Easter sittings shall commence on the Tuesday after Easter week and terminate on the Friday before Whit Sunday; and the Trinity sittings shall commence on the Tuesday after Whitsun week and terminate on the 8th of August.

945.  
Sittings of  
Court.  
[O. LXI. r. 1.]

The provisions of this rule, so far as they affect the Court of Appeal, are made under App. Jur. Act, 1876, s. 16, *ante* p. 88.

As to the abolition of terms, see S. C. Jud. Act, 1873, s. 26, *ante*, p. 29; as to commissions of assize, *ibid.*, s. 29, *ante*, p. 30; as to sittings in Middlesex and London, *ibid.*, s. 30, *ante*, p. 31.

By Order in Council, dated 12th Dec., 1883, Trinity sittings were extended till the 12th of August, and Michaelmas sittings directed to commence on the 24th of October: W. N. (1883), Pt. II. 591.

2. It shall not be necessary for the Court of Appeal or the High Court of Justice to sit on the day appointed to be kept as the Queen's Birthday.

946.  
Queen's  
Birthday.

This rule was introduced in 1883.

3. The sittings of the several offices of the Supreme Court shall extend over the whole of the four periods between the vacations.

947.  
Sittings of  
offices.

This rule was introduced in 1883.

4. The vacations to be observed in the several Courts and offices of the Supreme Court shall be four in every year, viz., the Long vacation, the Christmas vacation, the Easter vacation, and the Whitsun vacation. The Long vacation shall commence on the 10th of August and terminate on the 24th of October: the Christmas vacation shall commence on the 24th of December and terminate on the 6th of January: the Easter vacation shall commence on Good Friday and terminate on Easter Tuesday: and the Whitsun vacation shall commence on the Saturday before Whit Sunday and shall terminate on the Tuesday after Whit Sunday.

948.  
Vacations in  
Courts and  
offices.  
[O. LXI. r. 2.]

As to vacations, see S. C. Jud. Act, 1873, s. 27, *ante*, p. 29.

By an Order in Council, dated the 12th of December, 1883, it was ordered that the Long vacation should commence on the 13th of August, and terminate on the 23rd of October.

5. The days of the commencement and termination of each sitting and vacation shall be included in such sitting and vacation respectively.

949.  
Terminal days.  
[O. LXI. r. 3.]

**Order LXIII.**  
**rr. 6—11.**

950.

Days on which  
offices closed.

[O. LXI. r. 4.]

6. The several offices of the Supreme Court shall be open on every day of the year, except Sundays, Good Friday, Easter Eve, Monday and Tuesday in Easter week, Whit Monday, Christmas Day, and the next following working day, and all days appointed by proclamation to be observed as days of general fast, humiliation, or thanksgiving.

951.

District Regis-  
tries.

[O. LXI.  
r. 40.]

7. The offices of each District Registrar of the High Court of Justice shall be open on every day and hour in the year on which the offices of the Registrar of the County Court of the place in which the District Registry is situate are required to be kept open.

952.

Saturdays.

[O. LXI.  
r. 46.]

8. The offices of the Supreme Court (including the Judges' Chambers) shall, save as hereinafter mentioned, close on Saturdays at 2 o'clock.

953.

Office hours.

[O. LXI.  
r. 4c.]

9. The office hours in the several offices of the Supreme Court, other than the Summons and Order, Crown Office, and Associates, Departments of the Central Office, shall be from ten in the forenoon to four in the afternoon, except on Saturday and in vacation, when the offices shall close at two in the afternoon. In the excepted departments the hours shall be from eleven in the forenoon to five in the afternoon, except on Saturday and in vacation, when the hours shall be from eleven in the forenoon till three in the afternoon.

954.

Manchester  
District  
Registry.

[O. LXI.  
r. 4d.]

10. The office of the District Registry at Manchester shall not be open in any year on the five days next following Whit Monday.

955.

Vacation  
Judges.

[O. LXI. r. 5.]

11. Two of the Judges of the High Court shall be selected at the commencement of each Long Vacation for the hearing in London or Middlesex, during vacation, of all such applications as may require to be immediately or promptly heard. Such two Judges shall act as Vacation Judges for one year from their appointment. In the absence of arrangement between the Judges, the two Vacation Judges shall be the two Judges last appointed (whether as Judges of the said High Court or of any Court whose jurisdiction is by the principal Act transferred to the said High Court) who have not already served as Vacation Judges of any such Court, and if there shall not be two Judges for the time being of the said High Court who shall not have so served, then the two Vacation Judges shall be the Judge (if any) who has not so served and the senior Judge or Judges who has or have so served once only according to seniority of appointment, whether in the said High Court or such other Court as aforesaid. The Lord Chancellor shall not be liable to serve as a Vacation Judge.

See S. C. Jud. Act, 1873, s. 28, *ante*, p. 29.

As to what orders may be made by Judges of the Court of Appeal in Vacation, see note to O. LVIII., r. 1, *ante*, p. 435.

*Business disposed of by Vacation Judges.*—No business is heard by the Vacation Judges, or any other Judges sitting for them under the next rule, except such as requires to be immediately or promptly heard within the meaning of the above



section. No Judges except the Vacation Judges, or those sitting for them, can dispose of business in Vacation: Per Lush and Lopes, JJ., 24th Sept., 1877.

Order LXIII.  
rr. 11—16.

*Judgments under O. XIV.*—It was laid down by the above-named Judges that an application under O. XIV. would be heard as urgent if the right to make it had accrued in vacation, not otherwise.

12. The Vacation Judges may sit either separately or together as a Divisional Court as occasion shall require, and may hear and dispose of all causes, matters, and other business, to whichever Division the same may be assigned. No order made by a Vacation Judge shall be reversed or varied except by a Divisional Court or the Court of Appeal, or the Judge who made the order. Any other Judge of the High Court may sit in vacation for any Vacation Judge.

956  
Divisional  
Courts in  
vacation.  
[Cf. O. LXI.  
r. 6.]

The corresponding repealed rule provided that a single Judge of the Court of Appeal might reverse the order of a Vacation Judge. This has been altered.

*Ex parte Order.*—A motion to discharge an *ex parte* order made by a Vacation Judge should be made to the Judge to whose Court the action is assigned, not to the C. A.: *Boyle v. Sacker*, 58 L. T. 822.

13. Any Judge of the Chancery Division whose Chambers may be open for business during any vacation, or any Vacation Judge acting on his behalf, may issue summonses for the purpose of any proceeding before any other Judge of that Division at Chambers after the Vacation.

957.  
Chancery  
Chambers.

This rule is taken from C. O. XXXV., r. 58.

14. In the interval between the close of any sittings and the commencement of the next sittings, the judgments or orders of any Judge may be prosecuted at the Chambers of any other Judge by his permission; and in case the prosecution thereof shall not be completed during such interval, the prosecution may be continued at the Chambers of the same Judge if and so far as he shall think fit.

958.  
Orders made  
in interval  
between two  
sittings  
(Chancery).

This rule is taken from C. O. XXXV., r. 59.

15. Any interval between the sittings of the High Court or any Division thereof, not included in a vacation, shall, so far as the disposal of business by the Vacation Judges is concerned, be deemed to be a portion of the vacation.

959.  
Intervals  
between  
sittings.  
[Cf. O. LXI.  
r. 7.]

This rule substantially reproduces the provisions of the repealed O. LXI., r. 7, but the wording of the rule is considerably altered. See *Wilson v. Watson*, 38 L. T. 380.

16. The Official Referees shall sit at least from 10 a.m. to 4 p.m. on every day during the Michaelmas, Hilary, Easter, and Trinity sittings of the High Court of Justice, except on Saturdays, during such sittings, when they shall sit, at least, from 10 a.m. to 1 p.m.; but nothing in this Rule shall prevent their sitting on any other days.

960.  
Sittings of  
Official  
Referees.  
[Cf. O. LXI.  
r. 8.]

This rule reproduces the repealed O. LXI., r. 8, with the alteration that 1 p.m. on Saturdays is substituted for 2 p.m. in the repealed rule.



Order LXIV.  
rr. 1—6.

## ORDER LXIV.

## TIME.

961.

Interpretation  
of "month."  
[Cf. O. LVII.  
r. 1.]

1. Where by these Rules, or by any judgment or order given or made after the commencement of the principal Act, time for doing any act or taking any proceeding is limited by months, and where the word "month" occurs in any document which is part of any legal procedure under these Rules, such time shall be computed by calendar months, unless otherwise expressed.

This rule reproduces the provisions of the repealed O. LVII., r. 1, with the addition that the definition of month is extended to "any document which is part of any legal procedure under these rules, unless otherwise expressed."

962.

When  
Sunday, &c.  
excluded.  
[O. LVII.  
r. 2.]

2. Where any limited time less than *six days* from or after any date or event is appointed or allowed for doing any act or taking any proceeding, Sunday, Christmas Day, and Good Friday, shall not be reckoned in the computation of such limited time.

Where the limited period is not less than six days, Sundays are counted: *Ex parte Viney*, 4 Ch. D. 794. In such cases it is only when the last day is Sunday that, by the next rule, an extension is given.

*Winding-up—Affidavit in support of petition.*—In the computation of time within which an affidavit verifying a winding-up petition must be filed, Sunday is not to be reckoned: *Re Yeoland Consols Limited*, 58 L. T. 108.

963.

Time expiring  
on Sunday, &c.  
[O. LVII.  
r. 3.]

3. Where the time for doing any act or taking any proceeding expires on a Sunday, or other day on which the offices are closed, and by reason thereof such act or proceeding cannot be done or taken on that day, such act or proceeding shall, so far as regards the time of doing or taking the same, be held to be duly done or taken if done or taken on the day on which the offices shall next be open.

This rule is taken from C. O. XXXVII., r. 12.

Under this rule, where the eight days wherein to appeal from Chambers limited by O. LIV., r. 24, *ante*, p. 398, expires on Sunday, the motion may be made the next day: *Taylor v. Jones*, 45 L. J., C. P. 110. See, also, *Ex parte Saffery*, 5 Ch. D. 365.

*Time limited by statute.*—It was held, under C. O. XXXVII., r. 12, that where the time for doing an act was expressly limited by statute, the act could not be done after the expiration of the time so limited: *Flower v. Bright*, 2 J. & H. 590.

964.

No pleadings  
in Long vaca-  
tion.

[O. LVII.  
r. 4.]

4. No pleadings shall be amended or delivered in the Long vacation, unless directed by a Court or a Judge.

965.

Long vacation  
not to be  
reckoned in  
time of plead-  
ing.

[O. LVII.  
r. 5.]

5. The time of the Long vacation shall not be reckoned in the computation of the times appointed or allowed by these Rules for filing, amending, or delivering any pleading, unless otherwise directed by the Court or a Judge.

Cf. C. O. XXXVII., r. 13. Under that rule it was held that in cases not specified in the rule, vacations were reckoned in the computation of time: *Morgan*, p. 537, and cases there cited.

966.

Effect of order  
for security for  
costs.

6. The day on which an order for security for costs is served, and the time thenceforward until and including the day on which such security is given, shall not be reckoned in the computation of time

allowed to plead, answer interrogatories, or take any other proceeding in the cause or matter.

Order LXIV.  
rr. 6, 7.

This rule is taken from C. O. XXXVII., r. 14.

As to time to plead, see O. XX., O. XXI., O. XXIII., *ante*, pp. 214, 217, 229.  
As to time to answer interrogatories, see O. XXXI., rr. 8 and 26, *ante*, pp. 256, 267.

**7.** The Court or a Judge shall have power to enlarge or abridge the time appointed by these Rules, or fixed by any order enlarging time, for doing any act or taking any proceeding, upon such terms (if any) as the justice of the case may require, and any such enlargement may be ordered although the application for the same is not made until after the expiration of the time appointed or allowed.

967.

Enlargement  
or abridgment  
of time.  
[O. LVII.  
r. 6.]

This rule reproduces the provisions of the repealed O. LVII., r. 6. An order under this rule need not be drawn up: O. LII., r. 14, *ante*, p. 390.

*Order to dismiss action.*—Where an order is made dismissing an action unless some act is done within a specified time, if the order be not appealed against, the time for doing the act cannot be enlarged after it has expired, for the action is dead: *Whistler v. Hancock*, 3 Q. B. D. 83; *King v. Davenport*, 4 Q. B. D. 402; but the time for appealing against such an order may in a proper case be enlarged after it has expired: *Burke v. Rooney*, 4 C. P. D. 226; *Carter v. Stubbs*, 6 Q. B. D. 116.

*Where one act is required to be done before another.*—The rule does not apply to cases where acts are required to be done in a certain order, and that order is departed from. Thus, application for leave to join another cause of action with an action for the recovery of land must be made before writ issued, and if it be not so made, there is no power under this rule to enlarge the time for making the application and allow the action to continue: *Pilcher v. Hinde*, 11 Ch. D. 905. See, also, *Baker v. Oakes*, 2 Q. B. D. 171 (decided under O. LV., r. 1, of R. S. C. 1875).

*Discretion of Court.*—As regards cases falling within the application of the rule, the various decisions must be regarded as instances of the exercise of the discretion vested in the Court, and not as laying down any fixed and binding rule: see per *Ld. Selborne* in *Carter v. Stubbs*, 6 Q. B. D. 116, at p. 119.

*Time for appealing.*—In *The International Financial Society v. Moscow Gas Co.*, 7 Ch. D. 241, see at p. 247, a party desiring to appeal, misconstrued the rules, and thinking that he had twenty-one days from the time when judgment was entered, did not appeal within twenty-one days of the time when judgment was pronounced. The Court refused to extend the time. As to the extension of time for appealing to the Court of Appeal, see further O. LVIII., r. 15, and the note thereto, *ante*, p. 445. As to enlarging time to appeal in other cases where no appellate Court sits within the prescribed limit, see *Wallingsford v. Mutual Society*, 5 App. Cas. 685, which turned on the words of a rule now repealed. See, also, O. LIV., r. 24, and notes thereto.

*Endorsement on writ of date of service.*—In *Hastings v. Hurley*, 16 Ch. D. 734; *Sproat v. Peckett*, 48 L. T. 755, the time limited by O. IX., r. 13, for endorsing on a writ of summons the date of service was extended.

*Renewal of writ.*—In *Doyle v. Kaufman*, 3 Q. B. D. 340, the Court refused to extend the time for renewing a writ of summons where, in the absence of such renewal, the claim would be barred by the Statute of Limitations; but in a case where the statute was defeated by renewing a writ, *Malins, V.-C.*, allowed an extension of time for delivering a statement of claim, which owing to a slip made by the solicitor's clerk was two days too late: *Canadian Oil Works Corporation v. Hay*, W. N. (1878), 107. In *Eyre v. Cox*, 46 L. J., Ch. 316, leave was given to renew a writ after the expiration of the twelve months.

*Concurrent writ.*—Time enlarged for issuing a concurrent writ where original writ renewed, even though the enlargement of time might affect the operation of the Statute of Limitations: *Smalpage v. Tonge*, 17 Q. B. D. 644.

*Time for delivery of reply.*—See *Eaton v. Storer*, 22 Ch. D. 91.



**Order LXIV.**  
**rr. 7—12.**

*Setting aside default judgment.*—As to enlarging time for setting aside judgment for default of appearance at trial, see *Michael v. Wilson*, 25 W. R. 380.

*Notice of trial by defendant.*—The Court has no power under this rule to abridge the six weeks mentioned in O. XXXVI., r. 12, for that period is not a time appointed for doing any act or taking any proceeding within this rule: *Saunders v. Pawley*, 14 Q. B. D. 234.

968.  
Enlargement  
of time by  
consent.  
[O. LVII.  
r. 6a.]

8. The time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing, without application to the Court or a Judge.

See as to costs of enlargement of time, O. LXV., r. 27 (24), *post*, p. 494.

969.  
Expediting  
proceedings in  
Admiralty.  
[O. LVII.  
r. 7.]

9. In Admiralty actions the Court or a Judge shall have power at any stage of the proceedings in any such action, upon a motion or summons by either party, for the trial to take place on an early day to be appointed by the Court or a Judge, to appoint that such trial shall take place on any day or within any time which the Court or Judge shall think fit; and for such purpose the Court or Judge shall have power upon such motion or summons to dispense with the giving of notice of trial, or to abridge the time or times appointed by these Rules for giving such notice, for the delivery of pleadings, or for doing any other act or taking any other proceeding in the action, upon such terms (if any) as the nature of the case may require.

970.  
Delays in  
taking bail  
dispensed with  
by consent.

10. The delays required by these Rules with respect to the taking of bail in Admiralty actions may be dispensed with by consent of the solicitors in the action.

This rule was introduced in 1883, and is taken from Adm. Rules, 1859, No. 45. As to bail, see O. XII., rr. 19—21, *ante*, p. 160; O. XXIX., rr. 6, 15, and 16, *ante*, pp. 247, 249.

971.  
Hours of ser-  
vice.  
[O. LVII.  
r. 8.]

11. Service of pleadings, notices, summonses, orders, rules, and other proceedings, shall be effected before the hour of six in the afternoon, except on Saturdays, when it shall be effected before the hour of two in the afternoon. Service effected after six in the afternoon on any week-day except Saturday shall, for the purpose of computing any period of time subsequent to such service, be deemed to have been effected on the following day. Service effected after two in the afternoon on Saturday shall for the like purpose be deemed to have been effected on the following Monday.

See *Re Clay and Tetley*, 16 Ch. D. 3.

*Writ of summons.*—A writ of summons is not within this rule; even though specially endorsed under O. III., r. 6; for such a writ is not a “pleading”: *Murray v. Stephenson*, 19 Q. B. D. 60. See, too, *Veale v. Automatic Boiler Feeder Co.*, 18 Q. B. D. 631. For form of affidavit of service, see App. B, No. 23, *post*, p. 550.

972.  
Computation  
of time by  
days.

12. In any case in which any particular number of days not expressed to be clear days, is prescribed by these Rules, the same shall be reckoned exclusively of the first day and inclusively of the last day.

This rule is founded on R. G. H. T. 1853, r. 174.

“Not less than days.”—The interval of not less than fourteen days which under s. 51 of the Companies Act, 1862, is to elapse between the meetings, passing and confirming a special resolution, is an interval of fourteen clear days exclusive of the respective days of meeting: *Re Railway Sleepers Supply Co.*,



29 Ch. D. 204; and see the judgment of Chitty, J., where the cases as to computation of time are considered.

Order LXIV.  
rr. 12—15.

"Forthwith."—When an act is required by a statute or a Rule of Court to be done "forthwith," the word "forthwith" must be construed with regard to the object of the provision and the circumstances of the case: *Ex parte Lamb*, 19 Ch. D. 169; and see *Love v. Fox*, 15 Q. B. D. 667, at p. 679.

13. In any cause or matter in which there has been no proceeding for one year from the last proceeding had, the party who desires to proceed shall give a *month's* notice to the other party of his intention to proceed. A summons on which no order has been made shall not, but notice of trial although countermanded shall, be deemed a proceeding within this Rule.

973.  
Proceedings  
after lapse of  
a year.

This rule is founded on R. G. H. T., 1853, r. 176.

Where on default of appearance the plaintiff takes no step for a year this rule applies, and notice is necessary before judgment can be entered: *Webster v. Myer*, 14 Q. B. D. 231; *Staffordshire Bank v. Weaver*, W. N. (1884), 78.

"Proceeding."—"Proceeding" under this rule means a proceeding towards, and not after, judgment. Therefore where more than a year has elapsed after judgment, it is not necessary for a party who desires to issue execution to give a month's notice: *Houlston v. Woodall*, L. T., Dec. 13, 1884, p. 113.

14. An application to set aside an award may be made at any time before the last day of the sittings next after such award has been made and published to the parties.

974.  
Time for  
applying to  
set aside  
award.

This rule was introduced in 1883. Under the repealed rules it was held that for the purpose of computing the time within which to move to set aside an award the old terms were preserved: *College of Christ v. Martin*, 3 Q. B. D. 16; *Smith v. Parkside Co.*, 6 Q. B. D. 67. This anomaly is removed by the present rule, and for the future time will be computed by sittings. See note to s. 26 of S. C. Jud. Act, 1873, *ante*, p. 29.

15. In Admiralty actions a caveat, whether against the issue of a warrant, the release of property, or the payment of money out of the Admiralty Registry, shall not remain in force for more than *six months* from the date thereof.

975.  
Duration of  
caveat in  
Admiralty.

This rule is taken from No. 174 of the Admiralty Rules of 1859. See O. XXII., r. 21, and O. XXIX., *ante*, pp. 229, 246, for the provisions as to caveats.

As to payment of money in Admiralty actions, see rr. 34 and 46 of the S. C. Funds Rules, 1886, by which such money is lodged in the Supreme Court Pay Office, and paid out on production of an order there. The change does not, however, affect this rule.

## ORDER LXV.

### COSTS.

Order LXV.  
r. 1.

1. Subject to the provisions of the Acts and these Rules, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or Judge; Provided that nothing herein contained shall deprive an executor, administrator, trustee, or mortgagee who has not unreasonably instituted or carried on or

976.  
General rule  
as to costs.  
[Cf. O. LV.  
r. 1.]  
Trustees,  
mortgagees,  
&c.

Order LXV.  
r. 1.

Jury cases.

resisted any proceedings, of any right to costs out of a particular estate or fund to which he would be entitled according to the Rules hitherto acted upon in the Chancery Division: Provided also that, where any action, cause, matter, or issue is tried with a jury, the costs shall follow the event, unless the Judge by whom such action, cause, matter, or issue is tried, or the Court, shall, for good cause, otherwise order.

*Effect of Rule.*—The present rule differs from the corresponding repealed rule in two respects—firstly, by including costs of administrations in discretionary costs, and secondly in jury cases, by no longer requiring that the application for costs to the Judge who tried the case should be made “at the trial.”

**EXCEPTED PROCEEDINGS.**—This rule applies only to the costs of proceedings taken on or after the day on which the rules came into operation: *McClellan v. McClellan*, 29 Ch. D. 495. The rule applies to all proceedings in the High Court which are not expressly excepted from its operation: see *Ex parte Mercers' Co.*, 10 Ch. D. 480, at p. 482, per Jessel, M. R. See *e.g.*, costs of inspection of property: *Mitchell v. Darley Coal Co.*, 10 Q. B. D. 457. The Court has no new jurisdiction to order the payment of costs in cases where, before the Judicature Acts and Rules, there would have been no jurisdiction: *Re Mills' Estate*, 34 Ch. D. 24; *Holliday and Mayor of Wakefield*, 20 Q. B. D. 699. The exceptions are criminal proceedings and proceedings for divorce and other matrimonial causes: see O. LXVIII., r. 1, *post*, p. 509. By O. LXVIII., r. 2, this order (O. LXV.) is expressly extended to revenue proceedings and to all civil proceedings on the Crown side of the Queen's Bench Division, including mandamus and prohibition, and also to *quo warranto*.

Rule 1 is in terms made “subject to the provisions of the Act and these rules.”

*County Courts Act, 1867.*—The first limitation referred to is contained in s. 67 of S. C. Jud. Act, 1873, *ante*, p. 50. That section incorporates by reference s. 5 of the County Courts Act, 1867, and s. 4 of the County Courts Act, 1882, which deprive a plaintiff of costs who recovers less than £20 in an action founded on contract, or £10 in an action founded on tort, unless the Judge certifies for costs. See, as to the effect of this rule and S. C. Jud. Act, 1873, in a case where less than £20 is recovered in an action of contract, *Neaves v. Spooner*, cited under r. 12, *infra*.

*Rules dealing expressly with costs.*—The rule is further made subject to the other rules which deal expressly with costs. See, for instance, rule 12, which relates to actions on contracts where £50 or less is recovered. As to pauper costs, see O. XVI., r. 31. As to third party costs, see O. XVI., r. 54; as to costs on discontinuance, see O. XXVI.; on payment into Court, see O. XXII., r. 7; on discovery, see O. XXXI., rr. 3, 25; on attachment of debts, see O. XLV., r. 6; on interpleader, see O. LVII., r. 15; of solicitor acting as next friend, see rule 13 of this Order.

*Costs of executor, &c.*—As regards the costs of administration proceedings the repealed rule provided simply that “nothing herein contained shall deprive a trustee, mortgagee, or other person of any right to costs out of a particular estate or fund to which he would be entitled according to the rules hitherto acted upon in Courts of Equity.” The effect of that saving was, first, to keep alive the old rules as to such costs, and, secondly, to give an appeal from any order made as to such costs, such an order not being an order as to costs which by law are left to the discretion of the Court within the meaning of s. 49 of S. C. Jud. Act, 1873: *Farrow v. Austin*, 18 Ch. D. 58; *Turner v. Hancock*, 20 Ch. D. 303; see, too, *Re Chennell*, 8 Ch. D. 492; *Johnstone v. Cox*, 19 Ch. D. 17. As to whether the Court has jurisdiction to order a respondent to a petition under the Trustee Act, 1850, to pay costs, *quære*: *Re Sarah Knight's Will*, 26 Ch. D. 82.

The present rule makes such costs discretionary: and confines the saving of the Chancery rule to cases where a trustee, executor, &c., has not unreasonably instituted, carried on, or resisted proceedings. Thus, the Court has full discretion to order a plaintiff to pay the costs of any unnecessary or improper administration proceedings: *Re Blake*, 29 Ch. D. 913. The effect of the change appears to be to take away the right of appeal, except perhaps in cases where no misconduct is found as a fact. A trustee who has been guilty of no misconduct is entitled to costs as between solicitor and client, although it may result that two sets of costs as between solicitor and client are allowed: *Re Love*, 29 Ch. D. 348.



The decision of a Judge of the High Court ordering a defendant executor to pay the costs of an administration action, on the ground that he has caused litigation by refusing to furnish accounts, is subject to appeal: *Re Pugh*, 57 L. T. 858.

Order LXV.  
r. 1.

**Mortgagees.**—Where a Judge is satisfied that a mortgagee has carried on proceedings unreasonably, his discretion is unfettered: *Smallpeice v. Lee*, 30 Sol. J., 61. If a mortgagee is charged with misconduct, and nevertheless is awarded costs, an appeal as to such costs will not lie: *Charles v. Jones*, 33 Ch. D. 80.

**Rule applies to High Court only.**—The Order only applies to the High Court, but see *Plumb v. Craker*, 16 Q. B. D. 40. As to costs in the Court of Appeal, see O. LVIII., r. 4, *ante*, p. 438. As to costs in the House of Lords, see *post*, pp. 802, 810. As to costs incurred previous to application to the High Court, as, for instance, under the Trade Marks Registration Acts, see *Re Brandreth*, 9 Ch. D. 618.

**Costs under an award.**—Under the repealed rules it was held that after an order of reference to a Master under the C. L. P. Act, 1854, and an award made, the Court had no power to give costs: *Wimshurst v. Barrow Shipbuilding Co.*, 2 Q. B. D. 335; but see now O. LIX., r. 3, *ante*, p. 451, giving an appeal in matters of law with full powers over the matter.

**Effect of Rule on prior enactments as to costs.**—The effect of this order is to supersede and impliedly repeal all prior enactments, except the County Courts Act, 1867, which lay down any special rule as to costs instead of leaving them to the discretion of the Court. For instance, it supersedes the 21 Jac. 1, c. 16, s. 6, as to costs in slander where less than 40s. is recovered: *Garnett v. Bradley*, 3 App. Cas. 944; and s. 3 of the County Courts (Admiralty) Act, 1868; *Tenant v. Ellis*, 6 Q. B. D. 46; see, too, *Parsons v. Tinling*, 2 C. P. D. 119. Many of these enactments have in consequence been repealed by the Civil Procedure Acts Repeal Act, 1879 (42 & 43 Vict. c. 59), Sched. Pt. II.

**Act silent as to costs.**—But, though the effect of the rule is to remove any restrictions on the right of a successful party to costs which may have been imposed by statute, it does not give the Court a jurisdiction to make a suitor liable for costs which it did not before possess. Therefore, where an Act under which property was taken compulsorily by a public body contained no provision for payment by such body of the costs of application for payment out of Court of funds paid in under the Act, it was held that this rule did not give jurisdiction to order the payment of such costs: *Re Mills' Estate*, 34 Ch. D. 24 (questioning *Ex parte Mercers' Co.*, 10 Ch. D. 481); *Holliday and Mayor of Wakefield*, 20 Q. B. D. 699; see, too, *Foster v. G. W. Ry. Co.*, 8 Q. B. D. 515; *Garnett v. Bradley*, 3 App. Cas. 944; *Dicks v. Yates*, 18 Ch. D. 76; *Witt v. Corcoran*, 2 Ch. D. 69; *Re Sarah Knight's Will*, 26 Ch. D. 82, at p. 91.

**Double and treble costs.**—This rule probably does not affect the statutes which in certain cases give double and treble costs: see *Garnett v. Bradley*, 3 App. Cas. 944, at p. 970, per Lord Blackburn. Costs under these statutes are rather in the nature of damages or penalty than costs proper. By 5 & 6 Vict. c. 97, ss. 1, 2, the provisions of any public or private Act which give double or treble costs are repealed, and full costs, charges, and expenses are substituted therefor. But this enactment cannot affect subsequent statutes, and there are several Acts passed since 1842 under which double and treble costs are to be given; see, for instance, s. 18 of the County Courts Act, 1850 (13 & 14 Vict. c. 61); and s. 49 of the Prisons Act, 1865 (28 & 29 Vict. c. 126). Double costs may still be claimed, where such costs are given by an unrepealed statute: *Hasker v. Wood*, 54 L. J., Q. B. 419.

**Costs between solicitor and client.**—The Court of Chancery formerly had, and the High Court now has, in matters of equitable jurisdiction, a general discretionary power to award costs as between solicitor and client: *Andrews v. Barnes*, 36 W. R. 705; and see *Mordue v. Palmer*, 6 Ch. 22.

**DISCRETION.**—The discretion given by this Order is very wide. The Court may order the costs to be paid by the parties in definite proportions, or may order one party to pay to the other a fixed sum in lieu of taxed costs: *Wilmott v. Barber*, 17 Ch. D. 772, at p. 774; or may even make a successful plaintiff pay the whole costs of the other side: *Harris v. Petherick*, 4 Q. B. D. 611; *Fane v. Fane*, 13 Ch. D. 228; but where the case has been tried by a jury, the Court, in dealing with the costs, must assume the correctness of the findings of the jury: *Harnett v. Vyse*, 5 Ex. D. 307. And where a plaintiff has no cause of action, the defendant cannot be made to pay the whole costs of the action: *Dicks v. Yates*, 18 Ch. D. 76. See, too, *Foster v. G. W. Ry. Co.*, 8 Q. B. D. 515.



**Order LXV.**  
r. 1.

*Discretion to be exercised judicially.*—Wide though the discretion is, it is a judicial discretion, and must be exercised on fixed principles; for instance, where a party successfully enforces a legal right, and in no way misconducts himself, then (subject to s. 5 of the County Courts Act, 1867) he is entitled to costs as of right: *Cooper v. Whittingham*, 15 Ch. D. 501; see, too, *The Condor*, 4 P. D. 115, at p. 120. As to how far the Court may regard the behaviour of the parties external to the conduct of the suit itself, see *Harnett v. Vyse*, *ubi supra*. In many classes of cases the Courts award costs on settled principles, but it is always in the discretion of the Court to depart from the rule where the circumstances of the particular case require it. The distinction between costs awarded according to a general rule and costs awarded in the exercise of a discretion on particular facts is important, because an appeal lies from an order awarding costs on a wrong principle; but no appeal lies from the exercise of an erroneous discretion on particular facts: see s. 49 of S. C. Jud. Act, 1873, *ante*, p. 42, and notes thereto.

*Examples.*—For examples of settled rules as to costs, see, as to costs in collision cases where neither party is to blame, *The City of Cambridge*, 35 L. T. 781; *The Innisfail*, 35 L. T. 819; where both parties are to blame, *The City of Manchester*, 5 P. D. 221; *The Milanese*, 43 L. T. 107; where a plea of compulsory pilotage is proved, *The Matthew Cay*, 5 P. D. 49; as to costs of a defendant whose interest has ceased, *Wymer v. Dodds*, 11 Ch. D. 436; as to costs where the plaintiff has no title to sue, *Dicks v. Yates*, 18 Ch. D. 76; as to costs of an application to stay proceedings pending an appeal, *Cooper v. Cooper*, 2 Ch. D. 492. In *Snelling v. Pulling*, 29 Ch. D. 85, the C. A. refused to enquire whether the discretion of the Judge had been rightly exercised. In *Re McConnell*, 29 Ch. D. 76, where a decision was reversed on appeal, the Court refused to make any order as to the costs of the appeal, on the ground that it had not been furnished with the reasons given by the Judge in the Court below for his decision.

**EVENT.**—The term “event” in this rule refers to the result of the whole litigation; see *Waring v. Pearman*, 32 W. R. 429. Thus, where a new trial is had, the successful party in the second trial is, in the absence of an order to the contrary, entitled to the costs of both trials and of the order for the new trial: *Green v. Wright*, 2 C. P. D. 354; *Field v. G. N. Ry.*, 3 Ex. D. 261.

Where defendant counterclaimed for a sum less than the amount claimed by the plaintiff, but admitted the plaintiff’s claim, and the action was tried by a jury, who found for defendant on the counterclaim, the Judge at the trial ordered judgment to be entered for the plaintiff for the amount of the claim, with costs down to the date of the counterclaim, and that judgment should be entered for the defendant on the counterclaim with costs of the counterclaim and subsequent thereto, including the costs of the trial. Held, that the effect of this order was to prevent the costs from following the “event,” and that in the absence of “good cause” the Judge had no jurisdiction to make such order: *Wright v. Shaw*, 19 Q. B. D. 396.

The costs of an action in which judgment has been entered in default of defence, and the damages have been assessed by the jury upon a writ of inquiry, do not “follow the event,” there having been no trial with a jury: *Guth v. Howarth*, W. N. (1884), 99.

As to the meaning of the term “event,” see further note to next rule. The repealed rule provided that costs should follow the event, unless “upon application made at the trial for good cause shown the Judge before whom such action or issue is tried, or the Court, shall otherwise order.” The words “application made at the trial” gave rise to great difficulties (see *Baker v. Oakes*, 2 Q. B. D. 271; *Collins v. Welch*, 5 C. P. D. 27, at p. 33), which are now removed by their omission.

**GOOD CAUSE.**—As to what constitutes “good cause,” see *Jones v. Curling*, 13 Q. B. D. 262. If from all the facts proved before a Judge and jury, it appears that the action was brought or conducted oppressively by the plaintiff, that constitutes “good cause” so as to enable the Judge to interfere, and not only deprive a successful plaintiff of his costs, but also to order that he shall pay the defendant’s costs. If good cause exists the Court will decline to consider whether the Judge has exercised his discretion rightly or not: *Williams v. Ward*, 55 L. J., Q. B. 566. An appeal lies upon the question whether or not “good cause” has been shown: *Jones v. Curling*, *ubi sup.*; see, however, *Huxley v. West London Extension Ry. Co.*, 17 Q. B. D. 373, per Coleridge, C. J.

*The Court.*—Where in a jury case the Judge at the trial has made no order, the Divisional Court has under this rule an original jurisdiction to deal with the costs, and may make an order depriving the successful party of costs: *Myers v. Defries*, 4 Ex. D. 176; *Siddons v. Lawrence*, *ibid.*

*Costs as a penalty.*—Costs cannot be imposed as a penalty beyond the costs of suit: *Wilmott v. Barber*, 17 Ch. D. 772; nor will the difference between party and party and solicitor and client costs be given as damages: *Cockburn v. Edwards*, 18 Ch. D. 449; *Harrison v. McSheehan*, W. N. (1885), 207.

#### COSTS IN PARTICULAR CASES.

*Administration actions.*—(a.) *Where fund is insufficient.*—See Morgan & Wurtzburg, pp. 200—204; Dan. Pr., pp. 1220—1223; 2 Seton, pp. 845, 846, 875, 876. A residuary legatee plaintiff is entitled to costs between solicitor and client where the estate is insufficient for payment of legacies, provided it is sufficient for payment of debts, but not otherwise: *Re Harvey*, 26 Ch. D. 179. As to costs where the estate is deficient for the payment of annuities, see *Re Wilkins*, 27 Ch. D. 703. Where it appears probable that the estate will prove insufficient for payment of costs in full, the trustees are entitled to an order for payment of their costs in priority: *Dodds v. Tuke*, 25 Ch. D. 617. The costs of plaintiffs and defendants in an administration action are, in so far as the personal estate and residuary real estate prove insufficient to satisfy such costs, payable out of the specifically devised real estates in proportion to their values, and the Court will order such costs to be paid out of such estates, even in the absence of the specific devisees: *Re Price*, 31 Ch. D. 485; see, too, *Re Pearce*, 56 L. T. 228. Where in an action for administration of the estate of a deceased trader, the estate proved to be insufficient for payment in full of the separate creditors, but not to pay in full the joint creditors, plaintiff, a separate creditor, was held entitled to have solicitor and client costs: *Re McRae*, 32 Ch. D. 613. As to priority of payment in a debenture holder's action, see *Batten v. Wedgwood Coal Co.*, 28 Ch. D. 317.

(b.) *Where fund is sufficient.*—See Morgan & Wurtzburg, pp. 165—200; Dan. Pr., pp. 1223—1231; 2 Seton, pp. 876—879.

*Executors and trustees.*—See Morgan & Wurtzburg, pp. 396—416; Dan. Pr., pp. 1206—1220.

*Costs, charges and expenses.*—See *Re Chennell*, 8 Ch. D. 492. The costs of trustees properly incurred are a first charge on both the capital and income of their trust estate: *Stott v. Milne*, 25 Ch. D. 710.

*Bankrupt executor.*—Where a defaulting executor becomes bankrupt after judgment, he is entitled to his costs subsequent to the bankruptcy, but the prior costs must be set off against the debt: *Re Fowles*, 32 Ch. D. 243, following *Re Basham*, 23 Ch. D. 195. Where there were two trustees, one of whom was debtor to the estate and became bankrupt, the costs of the trustees were directed to be apportioned, those of the solvent trustee being paid out of the estate, and those of the insolvent trustee being set off against the amount found due from him: *McEwan v. Crombie*, 25 Ch. D. 175. The trustee in bankruptcy of a defaulting trustee who was served with notice of the order establishing the breach of trust by direction of the Judge, was held not to be entitled to costs: *Re Knott*, 35 W. R. 302.

*Solicitor-trustee.*—As to the right of a solicitor, who is a trustee or executor, to costs out of his trust estate, see Morgan & Wurtzburg, pp. 386—390; Dan. Pr., p. 1210; *Craddock v. Piper*, 1 Mac. & G. 664; *Re Corsellis*, 34 Ch. D. 675; *Re Barber*, 34 Ch. D. 77; *Re Ames*, 25 Ch. D. 72; *Re Chapple*, 27 Ch. D. 584.

*Mortgages.*—See Morgan & Wurtzburg, pp. 221—240; Dan. Pr., pp. 1179—1186; 2 Seton, pp. 1059—1066. As to what items will be allowed to mortgagees for costs incurred in connection with their security, see *National Provincial Bank v. Games*, 31 Ch. D. 582.

*Married woman.*—See Morgan & Wurtzburg, pp. 361—371. As to charging the income of the estate of a married woman, which she is restrained from anticipating, with costs of proceedings which were improperly instituted, see *Re Glanville*, 31 Ch. D. 532. As to costs in a probate action against a married woman having separate estate, see *Morris v. Freeman*, 3 P. D. 65.

*Infant.*—The next friend of an infant reversioner, plaintiff in an administration action, is only entitled to receive immediate payment of costs as between party and party out of the fund, but will have liberty to apply for the difference between such costs and solicitor and client costs when the fund falls into

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possession: *Damant v. Hennell*, 33 Ch. D. 224; *Re Burton*, W. N. (1887), 160; *Re Aldred*, W. N. (1888), 82 (in which latter case an immediate taxation as between solicitor and client was refused). As to costs against the next friend of an infant, see *Caley v. Caley*, 25 W. R. 528; and as to costs of infants and their next friends generally, see *Morgan & Wurtzburg*, pp. 351—361.

*Trustee in bankruptcy*.—As to the personal liability of a trustee in bankruptcy who adopts the defence of the bankrupt, see *Watson v. Holliday*, 20 Ch. D. 780; *Borneman v. Wilson*, 28 Ch. D. 53.

*Between co-defendants*.—A defendant, it seems, cannot enforce contribution for costs against a co-defendant by action: *Dearsley v. Middleweek*, 18 Ch. D. 237. As to an order on one defendant to pay the costs of another, see *Rudow v. Great Britain Ass. Co.*, 17 Ch. D. 609.

*Interlocutory costs*.—Where the costs of an interlocutory matter have been finally awarded by the Court of Appeal the successful party is entitled to have them taxed, although the action is still pending: *Philipps v. Philipps*, 5 Q. B. 60; see, too, *Beynon v. Godden & Co.*, 4 Ex. D. 246; but the action will not as a rule be stayed until they are paid: *Morton v. Palmer*, 9 Q. B. D. 89, though there is jurisdiction to stay proceedings until such costs are paid where the party in default is acting vexatiously in withholding payment: *Re Wickham*, 35 Ch. D. 272. As to reserving the question of interlocutory costs until the trial, see *Hodges v. Hodges*, 25 W. R. 162. As to liberty to apply for costs of an interlocutory proceeding where no order has been made at the time, see *Fritz v. Hobson*, 14 Ch. D. 542. See, further, *Morgan & Wurtzburg*, pp. 46—73; *Dan. Pr.*, pp. 1171—1174.

*Admiralty proceedings*.—The former practice in Admiralty by which a party paid costs on one-third of his claim being disallowed at a reference, no longer prevails: *The Friedeberg*, 10 P. D. 112.

**APPORTIONMENT OF COSTS**.—See *Morgan & Wurtzburg*, pp. 128—133; *Dan. Pr.*, pp. 1200—1202; 1 *Seton*, pp. 129, 130; rr. 2, 14, 27 (21), (31), (32), and notes thereto, *infra*; *Knight v. Purcell*, 49 L. J., Ch. 120; *Sparrow v. Hill*, 8 Q. B. D. 479; *Viscount Gort v. Rowney*, 17 Q. B. D. 625; *De Caux v. Skipper*, 31 Ch. D. 635 (foreclosure); *Re Griffiths*, 26 Ch. D. 465 (executor of defaulter executor representing estate of original testator).

*Apportionment of costs between different funds*.—See *Morgan & Wurtzburg*, pp. 174—176; *Dan. Pr.*, pp. 1231, 1232; 2 *Seton*, p. 877.

**PROCEEDINGS UNDER 6 & 7 Vict. c. 73**.—As to delivery and taxation of bills of costs under 6 & 7 Vict. c. 73 (The Attorneys' and Solicitors' Act), and taxation of costs under the same statute, see *Morgan & Wurtzburg*, pp. 426—507; *Morgan*, pp. 1—15; *Dan. Pr.*, pp. 1993—2036; 1 *Seton*, pp. 604—625.

As to what constitutes "special circumstances" under ss. 37, 41, see *Re Boycott*, 29 Ch. D. 571; *Re Norman*, 16 Q. B. D. 673.

**CHARGING ORDERS FOR COSTS**.—See 23 & 24 Vict. c. 127, s. 28; *Morgan & Wurtzburg*, pp. 567—573; *Morgan*, pp. 16—19; *Dan. Pr.*, pp. 1985—1990; 1 *Seton*, pp. 641—645. The Court will not, "*ex debito justitia*," grant a charging order in favour of a solicitor upon a fund paid into Court to abide the result of an action. The Court has no power to make a charging order upon money paid into a different Court: *Pierson v. Knutsford Estates Co.*, 13 Q. B. D. 666. As to the extent of the charge, see *Charlton v. Charlton*, 32 W. R. 90. Costs paid under order of the Court below and ordered by C. A. to be refunded are property recovered within the Act: *Guy v. Churchill*, 35 Ch. D. 489. As to the time for enforcing the charge, see *Re Green*, 26 Ch. D. 16. The Court will not sanction the use of the Act for the purpose of enabling parties to an action to charge funds recovered in an action with the payment of costs for which they are themselves liable, and which they are able to pay: *Harrison v. Cornwall Mineral Railways Co.*, 53 L. J., Ch. 596. A solicitor who has been discharged by his client before trial may obtain a charge upon property recovered or preserved if his exertions have been instrumental in the result: *Re Wadsworth*, 29 Ch. D. 517. But the solicitor who was on the record when the fund was recovered is entitled to a first charge for his taxed costs of the action, and subject thereto the discharged solicitor is entitled to such lien as he obtained under his charging order: *S. C.*, W. N. (1886), 171. A charging order has priority over the claim of a judgment creditor of the client to attach the amount due, even though the charging order is obtained after service of the garnishee summons: *Dallow v. Garrold*, 14 Q. B. D. 543.



**INTEREST ON COSTS.**—See 1 & 2 Vict. c. 110, ss. 17, 18; 23 & 24 Vict. c. 127, s. 27; *Morgan & Wurtzburg*, pp. 538–540; *Morgan*, pp. 15, 16; *Dan. Pr.*, p. 1261; 1 *Seton*, p. 130; *Pyman v. Burt*, W. N. (1884), 100; *Landowners' West of England Drainage Co. v. Ashford*, 33 W. R. 41; *Re London Wharfing Co.*, 53 L. T. 112; *Boswell v. Coaks*, 36 W. R. 65; note to O. XLII., r. 16, *ante*, p. 343.

**ENFORCING PAYMENT OF COSTS.**—See O. XLII., rr. 17–19, as to the issue of writs of *fi. fa.* and *elegit* for costs. For a form of *fi. fa.* for costs, see App. H, No. 2, *post*, p. 596. For forms of judgment for costs, see App. F, Forms Nos. 14, 15, 16, *post*, pp. 588, 589. By O. XLIII., r. 7, no subpoena for costs and, except by leave, no sequestration to enforce payment of costs is to issue. As to the appointment of a receiver in order to recover costs from a married woman having separate estate, see *Bryant v. Bull*, 10 Ch. D. 153. It seems that a party entitled to costs under a Judge's order may sue for them: *Philpott v. Lehain*, 35 L. T. 855.

**Appeal as to costs.**—See S. C. Jud. Act, 1873, s. 49, *ante*, p. 42, and cases there cited.

**2. When issues in fact and law are raised upon a claim or counter-claim, the costs of the several issues respectively, both in law and fact, shall, unless otherwise ordered, follow the event.**

977.

Costs where there is a counter-claim.

**Effect of Rule.**—This rule, which was introduced in 1883, appears to be merely declaratory of the previous practice. Compare R. G. H. T., 1853, r. 62. It applies the same rule to jury and non-jury cases.

**Different causes of action.**—Where the plaintiff joins in his claim different causes of action (as for instance libel, trespass, and malicious prosecution) and the plaintiff succeeds on one issue, but the defendant succeeds on the others, the plaintiff (subject to the County Courts Act, 1867) is entitled to the general costs of the action, but the defendant is entitled to the costs of the issues on which he has succeeded: *Myers v. Defries*, 5 Ex. D. 180; *Sparrow v. Hill*, 8 Q. B. D. 479; *Abbott v. Andrews*, 8 Q. B. D. 648; see, too, *Knight v. Purcell*, 49 L. J., Ch. 120; *Ward v. Morse*, 23 Ch. D. 377, as to issues in the Chancery Division.

Where, in an action for the recovery of land, the plaintiff succeeds as to certain closes, and the defendant as to other closes, the verdict must be entered distributively, and the case treated as if there were separate issues. The plaintiff will get the general costs of the action and the costs of the issues found for him, and the defendant the costs of the issues on which he was successful: *Jones v. Curling*, 13 Q. B. D. 262.

Where two plaintiffs joined in one action, claiming for separate and distinct causes of action, and judgment was entered in favour of one plaintiff, and against the other, it was held that the successful plaintiff was entitled to recover from defendant the whole of his general costs of the action, and defendant was only entitled to recover from the unsuccessful plaintiff the costs occasioned by joining him: *Viscount Gort v. Rowney*, 17 Q. B. D. 625.

**Set-off.**—Where the plaintiff establishes his claim, but the defendant establishes a set-off of equal amount, the defendant is entitled to the costs of the action: see per Cockburn, C. J., in *Stooke v. Taylor*, 5 Q. B. D. 569, at p. 576; per Brett, L. J., in *Baines v. Bromley*, 6 Q. B. D. 691, at p. 694.

**Counter-claim.**—The same rule applies to a counter-claim in the nature of a defence to the original action: *Lowe v. Holme*, 10 Q. B. D. 236; and perhaps also to any counter-claim for a liquidated sum: *Baines v. Bromley*, 6 Q. B. D. 691, at p. 694. Where the plaintiff establishes his claim, and the defendant establishes a counter-claim in the nature of a cross action, the plaintiff (subject to s. 5 of the County Courts Act, 1867) is entitled to the costs of the action, and the defendant to the costs of the counter-claim: *Hallinan v. Price*, 41 L. T. 627; *Stooke v. Taylor*, 5 Q. B. D. 569; *Gray v. Davidson*, 5 Ex. D. 189; *Ellis v. De Silva*, 6 Q. B. D. 521; *Ward v. Morse*, 23 Ch. D. 377; *Hawke v. Brear*, 14 Q. B. D. 841; *Pearson v. Ripley*, 32 W. R. 463. As to the proper principle of taxation in such cases, see per Brett, L. J., in *Baines v. Bromley*, 6 Q. B. D. 691, at p. 695, where the decision turned on the terms of a particular order as to costs. See, also, *Goutard v. Carr*, 53 L. J., Q. B. 55; *Lund v. Campbell*, 14 Q. B. D. 821; *Ahrbecker v. Frost*, 17 Q. B. D. 606; *Hewitt & Co. v. Blumer & Co.*, 3 Times L. R. 221; *Shrapnel v. Laing*, 20 Q. B. D. 334.

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Where claim and counter-claim are both dismissed.—In such case the defendant is entitled to the general costs of the action, and the plaintiff is entitled to the extra costs occasioned by the counter-claim: *Saner v. Bilton*, 11 Ch. D. 416; *Mason v. Brentini*, 15 Ch. D. 287.

*Event*.—The word “event” must be, as far as possible, construed distributively: *Waring v. Pearman*, 32 W. R. 429; *Jones v. Curling*, 13 Q. B. D. 262; *Lund v. Campbell*, 14 Q. B. D. 821; *Hawke v. Brear*, *Ibid.* 841.

978.  
Costs of cause removed from inferior Court.

**3.** If a cause be removed from an inferior Court, having jurisdiction in the cause, the costs in the Court below shall be costs in the cause.

This rule is taken from R. G. H. T., 1885, r. 117.

979.  
Costs of actions tried in County Court.

**4.** Where an action is ordered to be tried in a County Court under the provisions of 19 & 20 Vict. c. 108, s. 26, the costs of the action shall, subject to the provisions of the Principal Act and these Rules, follow the event, unless by the Registrar's certificate of the result of the trial it shall appear that the Judge before whom the action was tried was of opinion that the question of costs ought to be referred to a Judge of the High Court, in which case no costs shall be recovered unless ordered by the Court or a Judge.

*Effect of Rule*.—This rule was introduced in 1883, and removes the difficulty which occurred in *Farmer v. May*, 44 L. T. 141, where it was held that in a case sent down under the statute referred to, the County Court had no jurisdiction over the costs and the registrar could not certify. When a remitted action has been tried the High Court retains its power under r. 1 of this Order of dealing with the costs of the action, notwithstanding the above rule: *Emeny v. Sandes*, 14 Q. B. D. 6. Where an action in which the plaintiff claimed £20 was ordered to be tried in the County Court, and at the trial the plaintiff only recovered £10, and the County Court Judge refused to certify that there was sufficient reason for bringing the action in the High Court, the plaintiff was allowed such costs as he would have been entitled to under r. 12, *infra*: *Evans v. Edwards*, W. N. (1883), 194.

For form of judgment, see *post*, p. 588.

980.  
Costs against solicitor personally for neglect to attend trial.

**5.** Where upon the trial of any cause or matter it appears that the same cannot conveniently proceed by reason of the solicitor for any party having neglected to attend personally, or by some proper person on his behalf, or having omitted to deliver any paper necessary for the use of the Court or Judge, and which according to the practice ought to have been delivered, such solicitor shall personally pay to all or any of the parties such costs as the Court or Judge shall think fit to award.

This rule is taken from C. O. XXI., r. 12. In *Towneley v. Jones*, 29 L. J., C. P. 299, the Court set aside a non-suit occasioned by the absence of the plaintiff's solicitor on a personal undertaking by the solicitor to pay the costs of the day.

981.  
Security for costs.  
[O. LV. r. 3.]

**6.** In any cause or matter in which security for costs is required, the security shall be of such amount, and be given at such times, and in such manner and form, as the Court or a Judge shall direct.

As to security for costs, see *Morgan & Wurtzburg*, pp. 7—25; *Dan. Pr.*, pp. 79—84; 1925—1931; 1 *Seton*, pp. 125, 126; 2 *Seton*, pp. 1643—1645; *Chitt. Arch.*, pp. 395—403.

*Former Practice*.—In the Court of Chancery, before the Judicature Acts, security for costs was limited to a fixed and arbitrary sum, except in cases within the Companies Act, 1862, s. 69. In the Common Law Courts substantial security, varying in amount according to the requirements of the case,



might always have been required. The latter practice is now adopted in all Divisions: see *Republic of Costa Rica v. Erlanger*, 3 Ch. D. 62.

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r. 6.

**CASES IN WHICH SECURITY MAY BE REQUIRED.**

*A. Residence abroad.—Plaintiff.*—The ordinary ground on which security is ordered is residence abroad. Thus, where the sole plaintiff or all the plaintiffs are resident abroad, security will be ordered: *Republic of Costa Rica v. Erlanger*, 3 Ch. D. 62; but no such order will be made if there are co-plaintiffs resident in England: *Winthorp v. Royal Exchange Assurance Co.*, 1 Dick. 282; *D'Hormusjee v. Grey*, 10 Q. B. D. 13. So, where plaintiff goes to reside permanently abroad after institution of the suit, security may be ordered: *Green v. Charnock*, 1 Ves. jun. 396; *Massey v. Allen*, 12 Ch. D. 807. A plaintiff, who is abroad in an official capacity on the public service, will not be required to give security: *Colebrook v. Jones*, 1 Dick. 154. Temporary residence within the jurisdiction is not now sufficient to avoid giving security: see r. 6A, *infra*. Where the plaintiff has available property within the jurisdiction, he will not be ordered to give security, though himself resident out of the jurisdiction: *Hamburger v. Poetting*, 30 W. R. 769; and where the defendant admits his liability, the Court has a discretion to relieve the plaintiff from giving security: *De St. Martin v. Davis*, W. N. (1884), 86; *Re Contract & Agency Corporation*, 57 L. J., Ch. 5. It is in the discretion of the Court to allow the mate of a foreign vessel, though not domiciled in England, to prosecute an action for wages without giving security for costs: *The Don Ricardo*, 5 P. D. 121.

*Counter-claiming defendant.*—Where a claim and counter-claim arise out of different matters, so that the counter-claim is really in the nature of a cross action, the defendant, if resident out of the jurisdiction, may be ordered to give security: *Sykes v. Sacerdoti*, 15 Q. B. D. 423; and see *Lake v. Haseltine*, 55 L. J., Q. B. 205; *The Julia Fisher*, 2 P. D. 115; *The Newbattle*, 10 P. D. 33. In *Mapleson v. Masini*, 5 Q. B. D. 144, where a plaintiff sued for breach of contract, and the defendant, a foreigner resident abroad, counter-claimed in respect of breaches of the same contract, it was held the defendant could not be compelled to give security. In *Winterfield v. Bradnum*, 3 Q. B. D. 324, the defendant admitted the claim, but set up a counter-claim against the plaintiff, a foreigner resident abroad. It was held that by so doing the defendant disentitled himself from asking for security for costs from the plaintiff.

*Quasi-plaintiff.*—The substantial and not the nominal position of the parties must be looked at. Thus, in an interpleader issue the defendant may be ordered to give security for costs in any case in which a plaintiff may be so ordered: *Tomlinson v. Land Finance Corporation*, 14 Q. B. D. 539. And conversely, where one of the defendants in an interpleader issue was really interested in the result as a plaintiff, it was held that he could not compel the nominal plaintiff, a foreigner resident abroad, to give security: *Belmonte v. Aynard*, 4 C. P. D. 352. A foreigner who served a notice of motion with reference to the subject-matter of the action, and asking that he might be added as a defendant, was ordered to give security, on the ground that, whatever his position as to costs might be, if and when he was made a defendant, he must, on that application, be treated as a person resident abroad coming forward to enforce a right, and stood in the position of a plaintiff: *Apollinaris Co. v. Wilson*, 31 Ch. D. 632.

*B. Misdescription of plaintiff's residence.*—If the plaintiff's place of residence is not stated, or is incorrectly stated, in the writ of summons, he may be ordered to give security for costs: see, e.g., *Swanzy v. Swanzy*, 27 L. J., Ch. 419; *Redondo v. Chaytor*, 4 Q. B. D. 453, per Baggallay, L. J., at p. 458; *Re Sturgis British Motive Power Syndicate*, 34 W. R. 163. And security for costs may also be required from a plaintiff who appears to have no permanent residence, or to have changed his residence during the suit for the purpose of evading service: *Dan. Pr.*, p. 322, n. (r), and cases there cited: see, also, *Morgan & Wurtzburg*, pp. 10, 11; *Morgan*, p. 541, where the authorities are collected.

*C. Privileged Persons.*—An ambassador's servant, whose person is privileged from arrest by 7 Anne, c. 12, may be restrained from proceeding with his suit until he has given security for costs: *Goodwin v. Archer*, 2 P. Wms. 452; *Dan. Pr.*, p. 83; *Morgan & Wurtzburg*, p. 10; *Morgan*, p. 542.

*D. Poverty.*—Mere poverty is not a ground for requiring security for costs to be given: *Hind v. Whitmore*, 2 K. & J. 458, at p. 462; *Dan. Pr.*, p. 84; *Morgan & Wurtzburg*, p. 14. But security for costs may be required from a poor relator in a charity suit: *A.-G. v. Skinners' Co.*, 1 C. P. Coop. 1, 5; from a nominal plaintiff: see the cases referred to by Bowen, L. J., in *Cowell v.*

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*Taylor*, 31 Ch. D. 34, at p. 38; *The Lake Megantic*, 36 L. T. 183; *Corporation of Hastings v. Ivall*, 9 Ch. 758.

*E. Insolvency.*—Neither is insolvency a ground for ordering security to be given: *Rhodes v. Dawson*, 16 Q. B. D. 548 (not following *Malcolm v. Hodgkinson*, L. R., 8 Q. B. 209; *Brocklebank v. Steamship Co.*, 3 C. P. D. 365; *Re Carta Para Mining Co.*, 19 Ch. D. 457). And a person suing as a trustee in bankruptcy, even though himself insolvent, will not be required to give security: *Denston v. Ashton*, L. R., 4 Q. B. 590; *Covell v. Taylor*, 31 Ch. D. 34. Where the plaintiffs are a body incorporated by Act of Parliament, the fact that they are insolvent, and that a receiver of the profits of their undertaking has been appointed, is not a ground for requiring security for costs to be given: *Dartmouth Harbour Commissioners v. Mayor of Dartmouth*, 34 W. R. 774.

*F. Limited company plaintiff.*—See 25 & 26 Vict. c. 89, s. 69; *Morgan & Wurtzburg*, pp. 15—17; *Buckley*, pp. 170—172; *Chadwyck-Healey*, p. 498; *Washoe Mining Co. v. Ferguson*, 2 Eq. 371; *Moscow Gas Co. v. International Financial Society*, 7 Ch. 225. The fact of the company being in liquidation is *prima facie* sufficient ground for the order being made: *Northampton Coal Co. v. Midland Waggon Co.*, 7 Ch. D. 500. But it seems that an unlimited company, though in liquidation, cannot be made to give security: *United Ports Insurance Co. v. Hill*, L. R., 5 Q. B. 395.

*G. Married Woman.*—A married woman, suing as a *feme sole*, cannot be compelled to give security for costs, even though she have no separate estate, and there be nothing upon which, if she fails, the defendant can issue available execution: *Re Isaac*, 30 Ch. D. 418; and see *Threlfall v. Wilson*, 8 P. D. 18; *Severance v. C. S. S. Association*, 48 L. T. 485. *Brown v. North*, 9 Q. B. D. 52, is inconsistent with the decision in *Re Isaac*. A married woman, suing by a next friend, obtained a judgment. The next friend was not a person of substance, and an order was made staying proceedings until the plaintiff had given security for costs. It was held by C. A. that, though a married woman suing alone cannot be compelled to give security on the ground of poverty, security had been rightly ordered, as the next friend alone was liable, and the plaintiff having obtained a judgment by her next friend, was too late to claim to sue alone: *Re Thompson*, 38 Ch. D. 317.

*Amount of security.*—Under C. O. XL., r. 6, security had to be given in the sum of £100. That sum is still the usual penalty of the bond: *Paxton v. Bell*, 24 W. R. 1013. But the amount may be increased: *Massey v. Allen*, 12 Ch. D. 807; *Sturla v. Freccia*, W. N. (1878), 161; *Republic of Costa Rica v. Erlanger*, 3 Ch. D. 62. The security may extend to past as well as future costs: *Massey v. Allen*, 12 Ch. D. 807; *Brocklebank v. King's Lynn Steamship Co.*, 3 C. P. D. 365. See *Morgan & Wurtzburg*, pp. 20, 21.

*Time for giving security.*—The old rules of the Court as to waiver of the right to security by taking a step in the action, do not seem to be any longer in force, and the Court has a discretion to direct security to be given at any time: *Lydney and Wigpool Iron Ore Co. v. Bird*, 23 Ch. D. 358; *Martano v. Mann*, 14 Ch. D. 419.

*Application: how made.*—Application for security for costs is made by summons at Chambers: *Vale v. Oppert*, 22 W. R. 629; 1 Seton, p. 125; and see *Re Hürter's Trade Mark*, W. N. (1887), 71. For form of summons, see *Dan. Forms*, p. 838; *Chitt. Forms*, p. 223. For forms of order, see 2 Seton, pp. 1643—1645.

*Miscellaneous points.*—A shareholder in a company, who is resident abroad, and appears to oppose a petition for winding up the company, cannot be compelled to give security for costs: *Re Percy & Kelly Nickel Co.*, 2 Ch. D. 531. The fact that plaintiff is about to apply for final judgment under O. XIV. is no ground for refusing an application for security: *Banque de Travaux v. Wallis*, W. N. (1884), 64. Where a party has been compelled to pay money into Court as security for costs, such fund cannot be looked upon as property recovered or preserved so as to enable the Court to give the solicitor of the party paying in a charging order upon it for the amount of his costs: *Re Wadsworth*, 29 Ch. D. 517. Where a fund paid into Court as security for costs has been paid out to the solicitor of the successful party, and the order is subsequently reversed on appeal, there is no jurisdiction to order the solicitors to refund: *Lydney and Wigpool Iron Ore Co. v. Bird*, 33 Ch. D. 85.

*Dismissal of action for want of security.*—When an order for security for costs is made, it is made on the terms that proceedings shall be stayed until security is given. If the security is not given, the defendant may apply to have the action dismissed for want of prosecution: *La Grange v. McAndrew*, 4 Q. B. D. 210.



An analogous practice is adopted by the Court of Appeal when security for the costs of an appeal is ordered but not given: *Polini v. Gray*, 11 Ch. D. 741.

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rr. 6—9.

6A. A plaintiff ordinarily resident out of the jurisdiction may be ordered to give security for costs, though he may be temporarily resident within the jurisdiction.

Where plaintiff ordinarily resident out of jurisdiction.

The above is r. 42 of R. S. C., Dec., 1885. *Redondo v. Chaytor*, 4 Q. B. D. 453; *Ebrard v. Gassier*, 28 Ch. D. 232, are now obsolete.

7. Where a bond is to be given as security for costs, it shall, unless the Court or a Judge shall otherwise direct, be given to the party or person requiring the security, and not to an officer of the Court.

982.  
Bond for security.  
[O. LV. r. 3.]

*Security, how given.*—Security may be given by a bond, or by payment of a sum of money into Court: Dan. Pr., p. 1927. For forms of order, see 2 Seton, pp. 1643, 1644.

*Sureties.*—The proposed sureties must be solvent: *Cliffe v. Wilkinson*, 4 Sim. 122. Fresh security must be given if the surety dies or becomes bankrupt: *Lautour v. Holcombe*, 1 Ph. 262; *Veitch v. Irving*, 11 Sim. 122; see Morgan & Wurtzburg, p. 22.

8. In causes and matters commenced after these Rules come into operation, solicitors shall be entitled to charge and be allowed the fees set forth in the column headed "lower scale" in Appendix N, in all causes and matters, and no higher fees shall be allowed in any case, except such as are by this Order otherwise provided for; and in causes and matters pending at the time when these Rules come into operation, to which the higher scale of costs previously in force was applicable, the same scale shall continue to be applied.

983.  
Lower scale, where to be allowed.  
[Cf. R. S. C. Costs, O. VI. r. 1.]

For scales, see *post*, p. 652.

*Effect of Rules as to scales.*—This and the two succeeding rules, relating to scales of costs, are new. The first two rules relate to party and party costs, the third, to solicitor and client costs. In both classes it is to be noted that particular applications may be severed, as regards scale, from the rest of the cause. Under the repealed rules (R. S. C., Costs, O. VI., rr. 1—4), the scale depended in general on the nature of the action, and also, in causes specially assigned to the Chancery Division, on the amount involved. There was, however, power to order either scale to be allowed. The practical result was to confine the higher scale to the Chancery Division. Under the present rules the lower scale is the rule in all divisions and all classes of cases. The allowance of the higher scale is always dependent on the Judge, or taxing officer under the direction of the Judge.

The rule preserves the existing scale for pending causes. For cases decided on the repealed rules, see Morgan & Wurtzburg, pp. 575—578.

9. The fees set forth in the column headed "higher scale" in Appendix N may be allowed, either generally in any cause or matter, or as to the costs of any particular application made, or business done, in any cause or matter, if, on special grounds arising out of the nature and importance, or the difficulty or urgency of the case, the Court or a Judge shall, at the trial or hearing, or further consideration of the cause or matter, or at the hearing of any application therein, whether the cause or matter shall or shall not be brought to trial or hearing or to further consideration (as the case may be), so order; or if the taxing-officer, under directions given to him for that purpose by the Court or a Judge, shall think that such allowance ought to be so made upon such special grounds as aforesaid.

984.  
Higher, when to be allowed.  
[Cf. R. S. C. Costs, O. VI. rr. 2 and 3.]

For Appendix N, see *post*, p. 652.

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**rr. 9—11.**

*Action commenced prior to R. S. C. 1883.*—In such case this rule does not apply: *Edgington v. Fitzmaurice*, 32 W. R. 848.

*Amount at stake.*—The largeness of the amount at stake in an action is not in itself sufficient reason for awarding costs on the higher scale: *The Horace*, 9 P. D. 86; *Re Spettigue's Trusts*, 32 W. R. 385.

*"Special grounds."*—In *Lydney and Wigpool Iron Ore Co. v. Bird*, 31 Ch. D. 328, Pearson, J., laid it down that costs ought to be allowed on the higher scale in any case in which witnesses are properly examined in Court, and a long time is necessarily occupied in the argument. But this proposition would seem to be too broadly stated. See *Williamson v. North Staffordshire Ry. Co.*, 32 Ch. D. 399, in which case, though one of importance and extreme difficulty, it was held that there were no special grounds within the rule to justify costs on the higher scale. Costs on the higher scale should be allowed in patent cases, where scientific witnesses are necessarily called: *Ellington v. Clark*, 58 L. T. 818. In an action to restrain breach of a covenant not to carry on a certain business, costs on the higher scale were awarded, and it was stated by Kekewich, J., that, in considering whether the costs of a cause shall be accorded on the higher scale, the Court will have regard to the importance of the questions in issue in the action, and also to the manner in which the case has been prepared and conducted at the trial: *Davies v. Davies*, 56 L. J., Ch. 481. It seems that although a case, as presented to the Court, may not be of special "difficulty" within the meaning of this rule, leave may be given to the taxing-master to tax all or any part of the costs on the higher scale, if it appears on such taxation that the difficulty was removed by the expenditure of time, money, and learned industry: *Fraser v. Brescia Tramways Co.*, 56 L. T. 771.

*Application granted.*—See *Re Chaytor's Settled Estate Act*, 25 Ch. D. 651.

*Application refused.*—See *Hudson v. Osgerby*, 50 L. T. 323; *Grafton v. Watson*, 51 L. T. 141; *Horner v. Whitechapel Board of Works*, 54 L. J., Ch. 148, at p. 151; *Cardiff SS. Co. v. Barwick*, 53 L. T. 56.

985.

Higher scale  
between solicitor  
and client.

**10.** Upon any reference to a taxing-officer to tax a bill of costs of a solicitor for the purpose of ascertaining the amount due to such solicitor in respect thereof from the person to be charged therewith, if such bill shall include charges for business done in any cause or matter, the taxing-officer may allow the fees set forth in the column headed "higher scale" in Appendix N in respect of such cause or matter, or in respect of any particular application made or business done therein, if on such special grounds, as are in the last preceding Rule mentioned, he shall think that such allowance ought to be so made.

See note to r. 8.

986.

Disallowance  
as between  
solicitor and  
client of costs  
improperly  
incurred.

**11.** If in any case it shall appear to the Court or a Judge that costs have been improperly or without any reasonable cause incurred, or that by reason of any undue delay in proceeding under any judgment or order, or of any misconduct or default of the solicitor, any costs properly incurred have nevertheless proved fruitless to the person incurring the same, the Court or Judge may call on the solicitor of the person by whom such costs have been so incurred to show cause why such costs should not be disallowed as between the solicitor and his client, and also (if the circumstances of the case shall require) why the solicitor should not repay to his client any costs which the client may have been ordered to pay to any other person, and thereupon may make such order as the justice of the case may require. The Court or Judge may, if they or he think fit, refer the matter to a taxing-officer for inquiry and report; and direct the solicitor in the first place to show cause before such taxing-officer, and may also, if they or he think fit, direct or authorise the Official Solicitor of the Supreme Court to attend and take part in such inquiry. Such notice (if any) of the proceedings or



order shall be given to the client in such manner as the Court or Judge may direct. Any costs of the Official Solicitor shall be paid by such parties, or out of such funds as the Court or a Judge may direct; or, if not otherwise paid, may be paid out of such moneys (if any) as may be provided by Parliament.

*Effect of Rule.*—This rule was introduced in 1883, but the first part, relating to payment of costs by a solicitor personally, appears to be an extension of C. O. XXXVI., r. 12, while the latter part, relating to the official solicitor, appears to be an adaptation of the last clause of C. O. XXXV., r. 23. The power given by this rule of directing a reference to the taxing officer to inquire as to the cause of delay, &c. in the proceedings is not confined to cases where costs have been incurred on behalf of, and are payable by, a party to the action, but apply also to a case where costs are payable out of a fund: *Brown v. Burdett*, 37 Ch. D. 207.

*Cases.*—For an instance where before this rule solicitors were ordered personally to pay costs, see *Schjott v. Schjott*, 19 Ch. D. 94.

In *Furness v. Davis*, 51 L. T. 854, the matter was referred to the taxing-master to report what disallowance should be made on the ground of delay. The taxing-master has power to disallow the costs of proceedings occasioned by the negligence of the solicitor. But if the negligence goes to the loss of the whole action, he ought not to disallow them, but to leave the client to bring an action for negligence against the solicitor: *Re Massey and Carey*, 26 Ch. D. 459. Where a solicitor omitted to take the necessary steps to secure the investment of purchase-moneys paid into Court, he was ordered to bear the loss, and to pay the costs of the application: *Batten v. Wedgwood Coal and Iron Co.*, 31 Ch. D. 346.

*Proceedings commenced prior to 24th Oct. 1883.*—The power given by this rule is not limited in its operation to costs incurred after the date when R. S. C. 1883, came into operation (as to which see *ante*, p. 128\*): *Brown v. Burdett*, 37 Ch. D. 207. Where an administration action, commenced before r. 1, *supra*, came into operation, turned out to be useless and vexatious, the costs incurred since that date were ordered to be paid by plaintiff, and the previous costs to be taxed in the usual way, with a direction to the taxing master to consider under this rule whether they had been increased by the delay: *Re Ormston*, 36 W. R. 216.

*Appeal.*—An order on a solicitor to pay the costs of an application personally may be appealed from without leave: *Re Bradford*, 15 Q. B. D. 635.

**12.** In actions founded on contract, in which the plaintiff recovers, by judgment or otherwise, a sum (exclusive of costs) not exceeding £50, he shall be entitled to no more costs than he would have been entitled to had he brought his action in a County Court, unless the Court or a Judge otherwise orders.

*Effect of Rule.*—The effect of this rule, which was introduced in 1883, is to bring into operation a third scale of costs into the High Court. Presumably the same construction will be put on the word “recovers” in this rule as has been put upon the same word in s. 5 of the County Courts Act, 1867, as to which see note to s. 67 of S. C. Jud. Act, 1873, *ante*, p. 50.

*County Courts Act, 1888.*—For the provisions of this Act with regard to costs of actions brought in the High Court which could have been commenced in a County Court, see 51 & 52 Vict. c. 43, s. 116. See *Addenda*, *ante*, p. exxix.

*Counsel.*—By r. 27 (46), *infra*, the costs of only one counsel will be allowed in cases within this rule. For scale of County Court allowances, see Pitt-Lewis’ County Court Practice.

*Cases.*—The rule does not apply to an action for breach of promise of marriage, as such an action could not have been brought in a County Court: *Saywood v. Cross*, 14 Q. B. D. 53. In *Oppenheimer v. Davenport*, W. N. (1884), 57, the action was brought to recover less than £20, and the Judge refused to allow any costs, stating that this rule did not interfere with the provisions of the County Courts Act; and see *Calvert v. Davison*, W. N. (1884), 18; *Ahrbecker v. Frost*, 17 Q. B. D. 606. But it seems that the effect of the S. C. Jud. Act, 1873, and of r. 1, *supra*, is to give a discretion to the Judge. Where, therefore, a sum of less than 20*l.* was recovered, and costs were awarded upon the higher scale of the County Court, the C. A. upheld the order of the Judge, overruling a decision to the contrary of a Divisional Court: *Neaves v. Spooner*, 36 W. R. 257.

Order LXV.  
rr. 11, 12.

987.  
County Court  
scale in con-  
tract actions  
of 50*l.* and  
under.

**Order LXV.  
rr. 12—14.**

*Costs allowed on High Court scale.*—In *Mendelssohn v. Hoppé*, W. N. (1884), 31, where the writ was served out of the jurisdiction, the plaintiff was held entitled to High Court costs. Where plaintiff resided in London and defendant in Newcastle, and defendant had obtained leave to defend on bringing the amount claimed into Court, and plaintiff recovered £30, High Court costs were allowed: *Copley v. Jackson*, W. N. (1884), 94.

*Award for less than £50.*—Where an action of contract has been referred to arbitration under an order by consent, providing that the costs of the action shall abide the event of the award, and the sum awarded does not exceed £50, a Judge has power to order that costs be taxed on the High Court scale: *Hyde v. Beardsley*, 18 Q. B. D. 244. Where an action and “all matters in difference” were referred, “costs of the action to abide the event of the award,” and £54 was awarded to plaintiff, £40 in respect of the action and the balance in respect of a matter in difference, it was held that the award was divisible, and that plaintiffs, having recovered less than £50 on a contract within this rule, were only entitled to County Court costs: *Emmett v. Heyes*, 36 W. R. 237. Where plaintiffs claimed more than £50, and upon an arbitration were awarded less than £20, whilst defendant was awarded a larger sum on his counter-claim, held that plaintiffs were not entitled to the costs of the issues on which they succeeded: *Ahrbecker v. Frost*, 17 Q. B. D. 606.

*Foreclosure.*—Where in an action for foreclosure £65 only was claimed, and both parties resided in the same County Court district, costs were ordered to be taxed on the County Court scale: *Crozier v. Dowsett*, 31 Ch. D. 67.

988.  
Costs of solicitor who is guardian *ad litem*.

**13.** Where the Court or a Judge appoints one of the solicitors of the Court to be guardian *ad litem* of an infant or person of unsound mind, the Court or Judge may direct that the costs to be incurred in the performance of the duties of such office shall be borne and paid either by the parties or some one or more of the parties to the cause or matter in which such appointment is made, or out of any fund in Court in which such infant or person of unsound mind may be interested, and may give directions for the repayment or allowance of such costs as the justice and circumstances of the case may require.

This rule is taken from C. O. XL., r. 4. See *Morgan & Wurtzburg*, pp. 343, 344.

*Costs of official solicitor.*—Where the official solicitor is appointed guardian to an infant defendant, the plaintiff will usually be directed to pay the costs and add them to his own: *Fraser v. Thompson*, 4 De G. & J. 659; *Newbury v. Marten*, 15 Jur. 166; *Harris v. Hamlyn*, 3 De G. & S. 470.

*Guardian ordered to pay costs personally.*—“Except in a case of gross misconduct, a guardian *ad litem* will not be ordered personally to pay the costs of an action which he has unsuccessfully defended (*Morgan v. Morgan*, 11 Jur., N. S. 233)”: *Dan. Pr.*, p. 175.

*Recovery of person of unsound mind pendente lite.*—In such case the defendant must pay the costs of the guardian before obtaining an order to substitute his own solicitor, but may add such costs to his own: *Frampton v. Webb*, 11 W. R. 1018; *Blyth v. Green*, W. N. (1876), 214.

989.  
Set-off notwithstanding lien for costs.

**14.** A set-off for damages or costs between parties may be allowed notwithstanding the solicitor's lien for costs in the particular cause or matter in which the set-off is sought.

*Effect of Rule.*—This rule is in affirmance of *Pringle v. Gloag*, 10 Ch. D. 676, and reverses the old common law practice under R. G. H. T., 1853, r. 63. See further, r. 27 (21), *infra*; *Morgan & Wurtzburg*, pp. 132—134.

*Gross judgments in separate actions.*—The Court, upon an application to set off cross judgments in distinct actions, is entitled, notwithstanding this rule, to order that the set-off shall be subject to the lien for costs of the solicitor of the opposite party—for, assuming that this rule applies to a set-off in distinct actions, it leaves the Court a discretion to allow the set-off either subject to or notwithstanding the solicitor's lien, and if it has no application the Court has the same discretion by the practice previous to R. G. H. T., 1853, r. 63, which,



since the repeal of that rule by the new rules, is revived: *Edwards v. Hope*, 14 Q. B. D. 922.

*Debtor to trust estate—Set-off of costs.*—Where a person, at the time of an order being made for the payment of his costs by trustees, is indebted to the trust estate, he cannot get any of such costs until he has paid the amount due from him to the trust, and the trustees, therefore, can set off the costs payable by them against the amount due from him. His solicitor cannot be in a better position than he is himself, and has no lien on such costs: *Wilde v. Walford*, 51 L. T. 441.

15. Costs may be taxed on an award, notwithstanding the time for setting aside the award has not elapsed.

990.  
Costs on  
award.

16. *One day's* notice of taxing costs, together with a copy of the bill of costs and affidavit of increase (if any), shall be given by the solicitor of the party whose costs are to be taxed to the other party or his solicitor, in all cases where a notice to tax is necessary.

991.  
Notice to tax.

An affidavit of increase is not usually required on taxations in the Chancery Division: *Smith v. Day*, 16 Ch. D. 726.

17. Notice of taxing costs shall not be necessary in any case where the defendant has not appeared in person, or by his solicitor or guardian.

992.  
Notice when  
unnecessary.

18. Every reference for the taxation of costs in the Chancery Division shall be made to the Taxing Master in rotation: provided that in any case where there shall have been any former taxation in the same cause or matter, or in any summons under Order LV., Rules 3 or 4, relating to the same estate or trust, the reference shall be to the Taxing Master before whom such former taxation took place.

993.  
Rotation of  
Taxing Mas-  
ters in Chan-  
cery.

This rule is taken from C. O. XL., r. 2.

For the rules referred to, see *ante*, pp. 404, 405.

19. The Taxing Masters shall be respectively assistant to each other, and in the discharge of their duties; and, for the better despatch of the business of their respective offices, any Taxing Master may tax or assist in the taxation of a bill of costs which has been referred to any other Taxing Master for taxation, and for ascertaining what is due in respect of such costs, and in such case shall certify accordingly.

994.  
Taxing Mas-  
ters to assist  
each other.

This rule is taken from C. O. XL., r. 3.

As to taxation of costs where an action has been transferred from one Division to another, see *Ross v. Ashwin*, W. N. (1884), 86.

19A. The following warrants in the office of the Taxing Masters of the Chancery Division shall be abolished: Warrant on leaving, warrant to bring in, and warrant to tax.

Warrant on  
leaving, &c.,  
abolished.

The above, and the next following seven rules, are rr. 43 to 50 of R. S. C., Dec., 1885.

19B. Within *seven days* from the date of the passing of an order directing a taxation of costs, the solicitor having the conduct of the order shall leave at the office of the proper Taxing Master a copy of the order, and (annexed thereto) a statement containing the names and addresses of the parties appearing in person, and of the solicitors representing the several parties to the cause or matter who do not appear in person, and the names and the nature of the interest of the parties represented by each solicitor.

Solicitor to  
leave copy of  
order at office  
of Taxing  
Master.

**Order LXV.  
rr. 19c—20.**

Taxing Master to issue notice of appointment.

\* *Sic. Quære* notice.

Directions by Taxing Master.

**19c.** On the copy order being left, a notice of an appointment to proceed with the taxation shall forthwith be issued by the Taxing Master to the solicitor having the conduct of the order, and a copy of such order\* shall be sent by post by the solicitor having the conduct of the order to the solicitors of such of the parties as the Taxing Master shall direct.

**19d.** At the time mentioned in the notice the Taxing Master shall appoint a time within which the bills of costs (with all necessary papers and vouchers) shall be left at his office, and he shall give all requisite directions for the conduct of the taxation pursuant to Regulation (27) of this Order.

The words "Regulation (27)" refer to No. (27) of r. 27, *infra*.

Taxation to continue without interruption.

**19e.** The taxation shall, if possible, be continued without interruption till completed, but if adjourned for any reason notice of the adjournment shall be sent by the Taxing Master by post to any solicitor not present at the time of the adjournment whose attendance he may desire at the next appointment.

Notice fixing time for taxation.

**19f.** In cases in which the solicitors leave their bills with the proper papers and vouchers and with the copy order as above mentioned, the Taxing Master may, if he shall think fit, forthwith issue a notice as in these Rules provided, fixing a time at which the taxation shall be proceeded with.

Delay of taxation by solicitor.

**19g.** Any solicitor who shall fail to leave his bill of costs (with the necessary papers and vouchers) within the time or extended time fixed by the Taxing Master for that purpose, or who shall in any way delay or impede the taxation shall, unless the Taxing Master otherwise directs, forfeit the fees to which he would otherwise be entitled for drawing his bill of costs and for attending the taxation, and the Taxing Master may also, if he shall think fit, exercise all or any of the powers vested in him by Regulations (28) and (55) of this Order.

This refers to Nos. (28) and (55) of r. 27, *infra*.

Bill of costs.

**19h.** In every bill of costs the professional charges shall be entered in a separate column from the disbursements, and every column shall be cast before the bill is left for taxation.

995.

Reference to chief clerk and inspection of documents.

**20.** Where, upon the taxation of any bill of costs in the Chancery Division, it appears to the Taxing Master that for the purpose of duly taxing the same it is necessary to inspect any books, papers, or documents relating to the cause or matter in the Chambers of any Judge, the Taxing Master shall be at liberty to request the Chief Clerk of such Judge to cause the same to be transmitted to the office of the Taxing Master, and also to request such Chief Clerk to certify any proceedings in the said Chambers which may be comprised in the bill of costs under taxation, and in such cases the Chief Clerk, when and so soon, and at and for such times, as the due transaction of the business at the said Chambers will permit, shall direct such books, papers, and documents to be transmitted to the office of the Taxing Master for his use during the taxation, and



shall certify the proceedings which have taken place in the said Chambers according to the request of the Taxing Master; and after the costs in respect of which such request of the Taxing Master was made shall have been certified, the Taxing Master shall cause the same books, papers, and documents, which have been so transmitted to his office, if then remaining there, to be returned to the Chambers of the Judge.

Order LXV.  
rr. 20—25.

This rule is taken from C. O. XL., r. 26.

**21.** When any book, paper, or document shall be transmitted from the Chambers of a Judge to the office of a Taxing Master, a memorandum of such transmission shall be made and signed by the Taxing Master or the clerk of the Taxing Master, at whose request such book, paper, or document may be transmitted, and shall be delivered to the Chief Clerk of such Judge; and when any such book, paper or document shall be returned from the office of the Taxing Master to the Judge's Chambers, a memorandum of such return shall be made and signed by such Chief Clerk, or by one of his clerks, and shall be delivered to the Taxing Master.

996.  
Memorandum  
of documents  
transmitted  
and returned.

This rule is taken from C. O. XL., r. 27.

**22.** Where in pursuance of any direction by the Court or a Judge in Chambers drafts are settled by any of the Conveyancing Counsel of the Court, the expense of procuring such drafts to be previously or subsequently settled by other counsel, on behalf of the same parties on whose behalf such drafts are settled by the Conveyancing Counsel of the Court, shall not be allowed on taxation as between party and party, or as between solicitor and client, unless the Court or a Judge shall otherwise direct.

997.  
Draft settled  
by conveyanc-  
ing counsel  
of Court.

This rule is taken from C. O. XL., r. 30.

*Conveyancing counsel.*—See O. LI., rr. 7—13, *ante*, pp. 385, 386.

**23.** Upon interlocutory applications where the Court or a Judge shall think fit to award costs to any party, the Court or Judge may by the order direct payment of a sum in gross in lieu of taxed costs, and direct by and to whom such sum in gross shall be paid.

998.  
Lump sum in  
interlocutory  
applications.

This rule is taken from C. O. XL., r. 37. For cases decided under that rule, see *Morgan & Wurtzburg*, p. 70; *Re Walters*, 58 L. T. 101. Independently of this rule it is the constant practice of the Court, where a person appears without necessity, to limit the amount of his costs: *Re Walters, ubi supra*.

**24.** The fees payable on proceedings before a Judge in Chambers under the Charitable Trusts Act, 1853, s. 28, shall be the same as the fees payable according to the Rules relating to costs in respect of other proceedings commencing by summons, and shall also in all other respects be regulated by these Rules.

999.  
Fees in pro-  
ceedings under  
Charitable  
Trusts Act.

This rule is taken from C. O. XLI., r. 11. As to applications under the Act referred to, see O. LV., rr. 13, 14, *ante*, p. 409; *Morgan*, pp. 94, 95.

**25.** Where the Judge directs that any matter commenced by summons under the Act in the last preceding Rule mentioned shall be heard in open Court, the same fees shall be payable and the same costs shall be allowed as would have been payable in respect of any other matter so heard.

1000.  
Proceedings  
in preceding  
rule when  
adjourned.

This rule is taken from C. O. XLI., r. 12.

**Order LXV.  
rr. 26, 27.**

1001.

Allowances  
under 22 & 23  
Vict. c. 35, s.  
30.

**26.** The fees and allowances to solicitors on proceedings under the Act 22 & 23 Vict. c. 35, s. 30, shall be the same as are payable under these Rules, and by the practice of the Court for business of a similar nature.

This rule is taken from Chanc. Gen. O., 20 March, 1860, r. 5. For the proceedings referred to (under Lord St. Leonards' Act), see O. LII., rr. 19—22, *ante*, p. 392; Morgan, pp. 102, 103.

*Special Allowances and General Regulations.*

1002.

Special al-  
lowances and  
general regu-  
lations.

**27.** The following special allowances and general regulations shall apply to all proceedings and all taxations in the Supreme Court of Judicature:—

The 58 sub-rules which follow are to a great extent taken from the "special allowances and general provisions," under the repealed R. S. C. Costs, O. VI. of 1875. The side notes in square brackets refer to the provisions of that Order. In the present rules references to the higher scale are omitted, and other modifications have been made adapted to the new procedure.

Instructions  
for drawing:  
allowance  
instead of.

[Cf. Rule 1.]

- (1.) As to writs of summons requiring special indorsement, and as to special cases, pleadings, and affidavits in answer to interrogatories, and other special affidavits, and admissions under Order XXXII., Rule 4, the taxing officer may, in lieu of the allowances for instructions and preparing or drawing, and attendances, make such allowance for work, labour and expenses in or about the preparation of such documents as in his discretion he may think proper.

The taxing officer is at liberty to allow a special charge for the perusal of exhibits to affidavits, the amount to be in his discretion: *Re De Rosaz*, 24 Ch. D. 684.

Allowance for  
copies.

[Rule 2.]

- (2.) As to drawing any pleading or other document, the fees allowed shall include any copy made for the use of the solicitor, agent, or client, or for counsel to settle.

Further  
allowance  
beyond scale.

[Cf. Rule 3.]

- (3.) As to instructions to sue or defend, or the preparation of briefs, if the taxing officer shall on special grounds consider the fee in either scale provided inadequate, he may make such further allowance as he shall in his discretion consider reasonable.

Allowances  
for affidavits.

[Rule 4.]

- (4.) As to affidavits, when there are several deponents to be sworn, or it is necessary for the purpose of an affidavit being sworn to go to a distance, or to employ an agent, such reasonable allowance may be made as the taxing officer in his discretion may think fit.

Attendance  
for affidavits.

[Rule 5.]

- (5.) The allowances for instructions and drawing an affidavit in answer to interrogatories and other special affidavits, and attending the deponent, to be sworn include all attendances on the deponent to settle and read over.

Fees for plead-  
ings, &c., when  
same solicitor  
employed.

[Rule 6.]

Perusals when  
same solicitor  
employed.

[Rule 7.]

- (6.) As to delivery of pleadings, services, and notices, the fees are not to be allowed when the same solicitor is for both parties, unless it be necessary for the purpose of making an affidavit of service.

- (7.) As to perusals the fees are not to apply where the same solicitor is for both parties.



- (8.) Where the same solicitor is employed for two or more defendants, and separate pleadings are delivered or other proceedings had by or for two or more such defendants separately, the taxing officer shall consider in the taxation of such solicitor's bill of costs, either between party and party or between solicitor and client, whether such separate pleadings or other proceedings were necessary or proper, and if he is of opinion that any part of the costs occasioned thereby has been unnecessarily or improperly incurred, the same shall be disallowed.

Order LXV.  
r. 27.

Allowances where same solicitor for more than one party.

This rule is taken from C. O. XL., r. 12. See *Brown v. Gellatly*, 15 W. R. 887; *Sharp v. Wright*, 1 Eq. 634. As to the discretion of the taxing officer, see *Beattie v. Lord Ebury*, 22 W. R. 68.

*Defendants appearing by the same solicitor.*—See *Re Colquhoun*, 5 De G., M. & G. 35; *Morgan & Wurtzburg*, pp. 126, 127.

*Costs of parties severing.*—See *Morgan & Wurtzburg*, pp. 124, 125, and the cases there collected.

*Attendances in Chambers.*—Where the same solicitor appears for all parties in proceedings in Chambers in the Chancery Division it is usual to allow a double set of fees; where, however, he appears for parties on both sides of the record, or for two sets of defendants, other parties being separately represented, he is only allowed one set of fees.

- (9.) As to evidence such just and reasonable charges and expenses as appear to have been properly incurred in procuring evidence, and the attendance of witnesses, are to be allowed.

Evidence: allowances.  
[Rule 8.]

See *Morgan & Wurtzburg*, pp. 486—488; *Morgan*, pp. 548—550.

*Discretion of taxing officer.*—The taxing officer must exercise his discretion on matters arising under this rule without reference to scales and rules before the Acts: *Turnbull v. Janson*, 3 C. P. D. 264.

*Costs of affidavits.*—Costs of an affidavit filed but not read in the order will be disallowed even on a taxation as between solicitor and client: *Stevens v. Lord Newborough*, 11 Beav. 403. See, too, *Stuart v. Greenall*, 13 Price, 755.

*Costs of witnesses not called.*—Where notice to cross-examine has been given, the costs of bringing up witnesses will be allowed even between party and party: *Clark v. Malpas*, 31 Beav. 554; and see as to witnesses present at trial but not called, *Leretus v. Newton*, 28 Sol. J. 166; *Wicksteed v. Biggs*, 52 L. T. 428. The costs of detaining witnesses on shore, though they were not called, have been allowed: *The City of Lucknow*, 51 L. T. 907. See also *Picasso v. Trustees of Maryport Harbour*, W. N. (1884), 85. The taxing master has a discretion to allow the costs of evidence procured before notice of trial whether the action goes to trial or not: *Windham v. Bainton*, 21 Q. B. D. 185.

*Qualification of scientific witnesses.*—A reasonable sum will be allowed for a scientific witness to get up a case: *Smith v. Buller*, 19 Eq. 473; *Churton v. Frewen*, 15 W. R. 559; *Duke of Beaufort v. Lord Ashburnham*, 13 C. B., N. S. 598; *Batley v. Kynoch*, 20 Eq. 632; *Mackley v. Chillingworth*, 2 C. P. D. 273.

*Shorthand notes of evidence.*—These will not, as a rule, be allowed: *Ashworth v. Outram*, 9 Ch. D. 483; *Kirkwood v. Webster*, 9 Ch. D. 239; except where they are necessary for the hearing of the case: *Lee Conservancy Board v. Button*, 12 Ch. D. 383. A Judge, chief clerk, or taxing master cannot order shorthand notes of evidence to be taken without the consent of the parties: *Re Hillery and Taylor*, 36 Ch. D. 262. As to costs of evidence in the Court below for use in the Court of Appeal, see *Hill v. Metropolitan Asylums Board*, 49 L. J., Q. B. 668; *Kelly v. Byles*, 13 Ch. D. 682; *Re Duchess of Westminster Co.*, 10 Ch. D. 307; *Earl De la Warr v. Miles*, 19 Ch. D. 80; *Bigsby v. Dickinson*, 4 Ch. D. 24; *Re*

**Order LXV. r. 27.** *Nation*, 57 L. T. 648. As to costs of shorthand notes on taxation as between solicitor and client, see *Re Blyth and Fanshawe*, 10 Q. B. D. 207; *Re Broad*, 15 Q. B. D. 420, cited under r. 38, *infra*.

Correspondence.

[Rule 9.]

(10.) As to agency correspondence, in country agency causes, and matters, if it be shown to the satisfaction of the taxing officer that such correspondence has been special and extensive, he is to be at liberty to make such special allowance in respect thereof as in his discretion he may think proper.

Attendance on Registrars in Chancery.

(11.) As to the attendance of solicitors upon the Registrars in the Chancery Division for the purpose of settling the terms of and passing judgments or orders, the taxing officer may, in such cases as are provided for by Order LXII., r. 15, make such special allowances in respect thereof as he shall consider reasonable.

Attendances at Chambers.

[Rule 10.]

(12.) As to attendances at the Judge's Chambers, where, from the length of the attendance, or from the difficulty of the case, the Judge or Master shall think the highest of the fees an insufficient remuneration for the services performed, or where the preparation of the case or matter to lay it before the Judge or Master in Chambers, or on a summons, shall have required skill and labour for which no fee has been allowed, the Judge or Master may allow such fee, in lieu of the fee of £1 1s. provided, not exceeding £2 2s., or where the higher scale is applicable, £3 3s., or in proceedings to wind up a company, £5 5s., as in his discretion he may think fit; and where the preparation of the case or matter to lay it before a Judge at Chambers on a summons shall have required and received from the solicitor such extraordinary skill and labour as materially to conduce to the satisfactory and speedy disposal of the business, and therefore shall appear to the Judge to deserve higher remuneration than the ordinary fees, the Judge may allow to the solicitor, by a memorandum in writing expressly made for that purpose and signed by the Judge, specifying distinctly the grounds of such allowance, such fee, not exceeding 10 guineas, as in his discretion he may think fit, instead of the fees of £2 2s., £3 3s., and £5 5s.

Costs of neglect to attend at Chambers.

[Rule 11.]

(13.) As to attendances at the Judges' Chambers, where by reason of the non-attendance of any party (unless it be considered expedient to proceed *ex parte*), or where by reason of the neglect of any party in not being prepared with any proper evidence, account, or other proceeding, the attendance is adjourned without any useful progress being made, the Judge may order such an amount of costs (if any) as he shall think reasonable to be paid to the party attending by the party so absent or neglectful, or by his solicitor personally; and the party so absent or neglectful is not to be allowed any fee as against any other party, or any estate or fund in which any other party is interested.

This reproduces the repealed r. 11 (special allowances), which was founded on C. O. XL., r. 31. Compare O. LIV., r. 7, and r. 11 of this Order.



- (14.) A folio is to comprise 72 words, every figure comprised in a column, or authorized to be used, being counted as one word.

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Length of a folio.

- (15.) Such costs of procuring the advice of counsel on the pleadings, evidence, and proceedings in any cause or matter as the taxing officer shall in his discretion think just and reasonable, and of procuring counsel to settle such pleadings and special affidavits as the taxing officer shall in his discretion think proper to be settled by counsel, are to be allowed: but as to affidavits a separate fee is not to be allowed for each affidavit, but one fee for all the affidavits proper to be so settled, which are or ought to be filed at the same time.

[Rule 12.]

Advice of counsel.

[Rule 13.]

*Fees to counsel.*—See Morgan & Wurtzburg, p. 489. The fees for counsel settling affidavits are usually allowed: *Davies v. Marshall*, 1 Dr. & Sm. 564.

*Discretion of taxing master.*—The Court will not interfere with the discretion of the taxing master as to fees to counsel unless a gross mistake has been made: *Brown v. Sewell*, 16 Ch. D. 517; *Hargreaves v. Scott*, 4 C. P. D. 21.

- (16.) As to counsel attending at Judges' Chambers, no costs thereof shall in any case be allowed, unless the Judge certifies it to be a proper case for counsel to attend.

Attendance of counsel at Chambers.

[Rule 14.]

This rule applies to a taxation as between solicitor and client: *Re Chapman*, 10 Q. B. D. 54.

- (17.) As to inspection of documents under Order XXXI., r. 15, no allowance is to be made for any notice or inspection, unless it is shown to the satisfaction of the taxing officer that there were good and sufficient reasons for giving such notice and making such inspection.

Inspection of documents.

[Rule 15.]

See O. XXXI., r. 15, *ante*, p. 263. Costs of inspection are not allowed on taxation as between party and party: *Brown v. Sewell*, 16 Ch. D. 517; *Wicksteed v. Biggs*, 52 L. T. 428.

- (18.) As to taking copies of documents in possession of another party, or extracts therefrom, under Rules of Court, or any special order, the party entitled to take the copy or extract is to pay the solicitor of the party producing the document for such copy or extract as he may, by writing, require, at the rate of 4d. per folio; and if the solicitor of the party producing the document refuses or neglects to supply the same, the solicitor requiring the copy or extract is to be at liberty to make it, and the solicitor for the party producing is not to be entitled to any fee in respect thereof.

Copies of documents.

[Rule 16.]

See Morgan & Wurtzburg, pp. 500, 501.

*Copies of pleadings.*—The costs of copies of pleadings on an interlocutory application will be allowed if they are necessary or proper for the attainment of justice: *Warner v. Mosses*, 19 Ch. D. 72.

*Solicitor concerned for several parties.*—A solicitor concerned for two or more parties is not entitled to charge for supplying to himself copies of documents which he has prepared: *Sharp v. Wright*, 1 Eq. 634.

*Copies for Court of Appeal.*—A copy of any material document should be provided for each member of C. A., and the costs allowed on taxation: *Re Randall*, 66 L. T. 8.

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*Copies generally.*—See *Millard v. Burroughes*, W. N. (1880), 4; *Wyman v. Bockett*, W. N. (1866), 318; *Singer Co. v. Loog*, 31 W. R. 392; *Ex parte Hall*, 19 Ch. D. 580.

Tender of costs to party served with petition whose appearance is objected to.  
[Cf. Rule 17.]

- (19.) Where any petition in a cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in Court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be £1 10s. The party making such payment shall be allowed the same in his costs, provided such service was proper, but not otherwise; but this Order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or Judge shall consider the party entitled, notwithstanding such notice or tender to appear in Court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid.

Under the repealed rule the amount to be tendered was £2 2s. See *Morgan & Wurtzburg*, pp. 67, 68.

*Trustees appearing.*—Trustees, respondents to a petition under the Trustee Relief Act for payment out of a fund, who have accepted the sum tendered under this rule, will not in general be allowed their costs of appearing on the petition: *Re Sutton*, 21 Ch. D. 855. In *Re Vardon's Trusts*, 33 W. R. 297, executors who had accepted the tender of 30s. for their costs were held entitled to their costs of appearance out of the residue of the share which remained in their hands.

*No tender.*—Where a party was served with notice of motion and no intimation was given that he need not appear, and no tender was made, he was allowed 40s. costs: *Campbell v. Holyland*, 7 Ch. D. 166.

Disallowance of costs of improper, unnecessary and vexatious matters and evidence.

[Rule 18.]

- (20.) The Court or Judge may, at the hearing of any cause or matter, or upon any application or proceeding in any cause or matter in Court or at Chambers, and whether the same is objected to or not, direct the costs of any indorsement on a writ of summons, pleading, summons, affidavit, evidence, notice requiring a statement of claim, notice to produce, admit, or cross-examine witnesses, account, statement, procuring discovery by interrogatories or order, applications for time, bills of costs, service of notice of motion or summons, or other proceedings, or any part thereof, which is improper, vexatious, unnecessary, or contains vexatious or unnecessary matter, or is of unnecessary length, or caused by misconduct or negligence, to be disallowed, or may direct the taxing officer to look into the same and to disallow the costs thereof, or of such part thereof as he shall find to be improper, unnecessary, vexatious, or to contain unnecessary matter, or to be of unnecessary length, or caused by misconduct or negligence; and in such case the party whose costs are so disallowed shall pay the costs occasioned thereby to the other parties; and in any case where such question shall not have been raised before and dealt with by the Court or Judge, it shall be the duty of the taxing officer to look into the



same (and, as to evidence, although the same may be entered as read in any decree or order) for the purpose aforesaid, and thereupon the same consequences shall ensue as if he had been specially directed to do so; and in the Queen's Bench Division the Master shall make such order as may be required to effect the object of this regulation.

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Disallowance  
by taxing  
officer.

*Duty of Taxing Officer.*—The Taxing Master must exercise the discretion conferred by this rule without special directions from the Judge: *Re Wormsley*, 39 L. T. 85.

*Scandalous matter.*—The Court has power to order a party who has filed an affidavit containing scandalous matter to pay the costs of it, *mero motu*: *Cracknell v. Janson*, 11 Ch. D. 1. As to scandalous matter in a bill of costs, see *Re Miller*, 54 L. J., Ch. 205.

*Unnecessary writs.*—See *Guéret v. Young*, W. N. (1883), 216.

- (21.) In any case in which, under the last preceding regulation, or any other Rule of Court, or by the order or direction of a Court or Judge, or otherwise, a party entitled to receive costs is liable to pay costs to any other party, the taxing officer may tax the costs such party is so liable to pay, and may adjust the same by way of deduction or set off, or may, if he shall think fit, delay the allowance of the costs such party is entitled to receive until he has paid or tendered the costs he is liable to pay; or such officer may allow or certify the costs to be paid, and direct payment thereof, and the same may be recovered by the party entitled thereto in the same manner as costs ordered to be paid may be recovered.

Set-off for  
costs.

[Rule 19.]

*Set-off of costs.*—This rule does not apply to different actions between the same parties, but only to costs incurred in the same action or proceeding: *Barker v. Hemming*, 5 Q. B. D. 609. A change of solicitors is immaterial if the costs be incurred in the same action or proceeding: *Roberts v. Buel*, 8 Ch. D. 198. As to setting off a debt against taxed costs and the solicitor's lien for costs, see *Pringle v. Gloag*, 10 Ch. D. 676, and r. 14 of this Order, and notes thereto, *ante*, p. 484. Costs which a party is ordered to pay personally may be set off against costs which he is entitled to receive out of a fund in Court: *Batten v. Wedgwood Iron and Coal Co.*, 28 Ch. D. 317.

As to set off of costs, see *Morgan & Wurtzburg*, pp. 132—134; 1 *Seton*, pp. 117—119.

- (22.) Where in the Chancery Division any question as to any costs is under Regulation 20 dealt with at Chambers, the Chief Clerk is to make a note thereof, and state the same on his allowance of the fees for attendances at Chambers, or otherwise as may be convenient for the information of the taxing officer.

Note by chief  
clerk for tax-  
ing officer.

[Rule 20.]

- (23.) Where any party appears upon any application or proceeding in Court or at Chambers, in which he is not interested, or upon which, according to the practice of the Court, he ought not to attend, he is not to be allowed any costs of such appearance, unless the Court or Judge shall expressly direct such costs to be allowed.

Disallowance  
where attend-  
ance unneces-  
sary.

[Rule 21.]

Compare O. LV., r. 42, *ante*, p. 417; see *Morgan & Wurtzburg*, p. 69.

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Unnecessary  
extension of  
time.

[Cf. Rule 22a.]

- (24.) The costs of applications to extend the time for taking any proceedings shall be in the discretion of the taxing officer unless the Court or Judge shall have specially directed how the costs are to be paid or borne. The taxing officer shall not allow the costs of more than one extension of time, unless he is satisfied that such extension was necessary, and could not, with due diligence, have been avoided. The costs of a summons to extend time shall not be allowed in cases to which Rule 8 of Order LXIV. applies, unless the party taking out such summons has previously applied to the opposite party to consent, and he has not given a consent, to a sufficient extension of time, or the taxing officer shall consider there was a good reason for not making such application; and in case the taxing officer shall not allow the costs of such summons, and shall consider that the party applying ought to pay the costs of any other party occasioned thereby, he may direct such payment, or deal with such costs, in the manner provided by Regulation 21.

This rule, in so far as it lays down directions for the taxing officer, was introduced in 1883. By O. LXIV., r. 8, *ante*, p. 470, time for delivering, amending, or filing any pleading, answer, or other document may be enlarged by consent in writing without an order.

Powers of  
taxing officers.  
[Rule 23.]

- (25.) The taxing officers of the Supreme Court, or of any Division thereof, shall, for the purpose of any proceeding before them, have power and authority to administer oaths, and shall, in relation to the taxation of costs, perform all such duties as have heretofore been or are by general orders directed to be performed by any of the Masters, Taxing Masters, Registrars, or other officers of any of the Courts whose jurisdiction is by the principal Act transferred to the High Court of Justice or Court of Appeal, and shall, in respect thereof, have such powers and authorities as previous to the commencement of the principal Act were, or by general orders are, vested in any of such officers, including examining witnesses, directing production of books, papers, and documents, making separate certificates or allocaturs, requiring any party to be represented by a separate solicitor, and to direct and adopt all such other proceedings as could be directed and adopted by any such officer on references for the taxation of costs, and taking accounts of what is due in respect of such costs, and such other accounts connected therewith as may be directed by the Court or a Judge.

*Evidence before Taxing Master.*—On a taxation between the solicitor and client, the master, after perusing an affidavit of the solicitor and an affidavit of the client denying the facts alleged, refused to allow the solicitor to submit an affidavit in reply, or to cross-examine the client. It was held that the master should have allowed further evidence, and should have taken such evidence, *vivâ voce*, under this rule: *Re Evans, Ex parte Brown*, 35 W. R. 546. A taxing officer has no jurisdiction to order shorthand notes of evidence before him to be taken, and costs thereby incurred, without the consent of the parties: *Re Hilleary and Taylor*, 36 Ch. D. 262.

*What matters within province of Taxing Master.*—See Morgan & Wurtzburg, p. 481; *King v. Savery*, 8 De G., M. & G. 311.



- (26.) Where an account consists in part of any bill of costs, the Court or Judge may direct the taxing officer to assist in settling such costs, not being the ordinary costs of passing the account of a receiver, and the taxing officer, on receiving such direction, shall proceed to tax such costs, and shall have the same powers, and the same fees shall be payable in respect thereof, as if the same had been referred to the taxing officer by an order; and he shall return the same, with his opinion thereon, to the Court or Judge by whose direction the same were taxed.

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r. 27.

Taxation where an account consists in part of a bill of costs.

This rule is taken from C. O. XL., r. 25.

- (27.) The taxing officer shall have authority to arrange and direct what parties are to attend before him on the taxation of costs to be borne by a fund or estate, and to disallow the costs of any party whose attendance such officer shall in his discretion consider unnecessary in consequence of the interest of such party in such fund or estate being small or remote, or sufficiently protected by other parties interested.

What parties to attend taxations.

[Rule 24.]

- (28.) When any party entitled to costs refuses or neglects to bring in his costs for taxation, or to procure the same to be taxed, and thereby prejudices any other party, the taxing officer shall be at liberty to certify the costs of the other parties, and certify such refusal or neglect, or may allow such party refusing or neglecting a nominal or other sum for such costs, so as to prevent any other party being prejudiced by such refusal or neglect.

Refusal or neglect to bring in costs for taxation.

[Rule 25.]

- (29.) As to costs to be paid or borne by another party, no costs are to be allowed which do not appear to the taxing officer to have been necessary or proper for the attainment of justice or defending the rights of the party, or which appear to the taxing officer to have been incurred through over-caution, negligence, or mistake, or merely at the desire of the party.

Unnecessary costs disallowed between party and party.

[Rule 26.]

Cf. C. O. XL., r. 32.

See *Simmons v. Storer*, 14 Ch. D. 154, as to abortive garnishee summonses.

*Separate appearances by defendants.*—The taxing officer has a discretion to allow to defendants who appear separately separate sets of costs, and his discretion is not subject to review by the Court, unless he has made a mistake in principle: *Boswell v. Coaks*, 36 Ch. D. 444.

*Principle of party and party taxation.*—"It is of great importance to litigants who are unsuccessful that they should not be oppressed by having to pay an excessive amount of costs. The costs chargeable under a taxation as between party and party are all that are necessary to enable the adverse party to conduct the litigation, and no more. Any charges merely for conducting litigation more conveniently may be called luxuries, and must be paid by the party incurring them": *Smith v. Butler*, 19 Eq. 473, at p. 475, per Malins, V.-C. See also *Simmons v. Storer*, 14 Ch. D. 542; *Warner v. Mosses*, 19 Ch. D. 72. See also *Morgan & Wurtzburg*, pp. 482 *et seq.* As to costs incurred after offer to settle, see *Trotter v. Maclean*, 13 Ch. D. 574.

*Solicitor—Defendant in person.*—Where an action is brought against a solicitor who defends it in person, and obtains judgment, he is entitled upon taxation to the same costs as if he had employed a solicitor, except in respect of items which the fact of his acting directly renders unnecessary: *London Scottish Benefit Society v. Chorley*, 13 Q. B. D. 872; see also *Re Donaldson*, 27 Ch. D. 544.

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Allowances  
for work not  
provided for.

[Rule 27.]

- (30.) As to any work and labour properly performed and not herein provided for, and in respect of which fees have heretofore been allowed, the same or similar fees are to be allowed for such work and labour as have heretofore been allowed.

See note to r. (38).

*Refreshers.*—As to the allowance of refreshers on an argument in the Court of Appeal, see *Svensden v. Wallace*, 16 Q. B. D. 27; *Easton v. London Joint Stock Bank*, 38 Ch. D. 25.

*Costs of abandoned motion, &c.*—See *Harrison v. Leutner*, 16 Ch. D. 559; *Thomas v. Palin*, 21 Ch. D. 360.

Costs where  
pleadings  
amended.

- (31.) Where the plaintiff is directed to pay to the defendant the costs of the cause, the costs occasioned to a defendant by any amendment of the plaintiff's pleadings shall be deemed to be part of such defendant's costs in the cause (except as to any amendment which shall appear to have been rendered necessary by the default of such defendant); but there shall be deducted from such costs any sum which may have been paid by the plaintiff according to the course of the Court at the time of any amendment.

This rule is taken from C. O. XL., r. 7. See as to amendment of pleadings, O. XXVIII., rr. 2—6, *ante*, p. 244.

Defendant's  
costs where  
plaintiff's  
amendment  
disallowed.

- (32.) Where upon taxation a plaintiff who has obtained a judgment with costs is not allowed the costs of any amendment of his pleadings on the ground of the same having been unnecessary, the defendant's costs occasioned by such amendment shall be taxed, and the amount thereof deducted from the costs to be paid by the defendant to the plaintiff.

This rule is taken from C. O. XL., r. 8.

*Cost of amendments.*—See *Morgan & Wurtzburg*, pp. 35, 36; *Burchell v. Giles*, 11 Beav. 34; *Pledge v. Buss*, Johns. 663; *Watts v. Manning*, 1 S. & S. 421; *Monck v. Earl of Tankerville*, 10 Sim. 284.

Taxation  
where action,  
&c., dismissed  
with costs.

- (33.) Where an action or petition is dismissed with costs, or a motion is refused with costs, or any costs are by any general or special order directed to be paid, the taxing officer may tax such costs without any order referring the same for taxation, unless the Court or a Judge upon the application of the party alleging himself to be aggrieved prohibits the taxation of such costs.

This rule is taken from C. O. XL., r. 38.

*Costs directed to be paid by Court of Appeal.*—An order of the Court of Appeal, directing payment of costs, without any intimation that the taxation and payment are to be postponed, means that they are to be taxed and paid forthwith: *Philipps v. Philipps*, 5 Q. B. D. 60.

*Costs of motion ordered to stand over to the trial.*—When an action is dismissed with costs, the costs of a motion for injunction ordered to stand over till the trial will be allowed to the defendant on taxation without any special mention of such costs in the judgment: *Gosnell v. Bishop*, 38 Ch. D. 385.

Proceedings  
where costs  
directed to be  
taxed in case  
parties differ.

- (34.) Where it is directed that costs shall be taxed in case the parties differ about the same, the party claiming the costs shall bring the bill of costs into the office of the proper



taxing officer, and give notice of his having so done to the other party, and at any time within *eight days* after such notice such other party shall have liberty to inspect the same without fee, if he thinks fit. And at or before the expiration of the *eight days*, or such further time as the taxing officer shall in his discretion allow, such other party shall either agree to pay the costs or signify his dissent therefrom, and shall thereupon be at liberty to tender a sum of money for the costs; but where he makes no such tender, or where the party claiming the costs refuses to accept the sum so tendered, the taxing officer shall proceed to tax the costs; and where the taxed costs shall not exceed the sum tendered, the costs of the taxation shall be borne by the party claiming the costs.

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This rule is taken from C. O. XL., r. 39.

- (35.) Where any costs are by any judgment or order directed to be taxed and to be paid out of any money or fund in Court, the taxing officer in his certificate of taxation shall state the total amount of all such costs as taxed without any direction for that purpose in such judgment or order.

Total amount to be stated where costs to be paid out of funds in Court.

This rule is taken from C. O. XL., r. 40.

- (36.) The allowances in respect of fees to the Conveyancing Counsel of the Court, and to any accountants, merchants, engineers, actuaries, and other scientific persons to whom any question is referred, shall be regulated by the taxing officers, subject to appeal to the Court or Judge, whose decision shall be final.

Allowances for fees to conveyancing counsel, &c.

This rule reproduces 15 & 16 Vict. c. 80, s. 43.

*Accountant.*—See *Meymott v. Meymott*, 33 Beav. 590.

*Surveyors.*—See *A.-G. v. Drapers' Co.*, 9 Eq. 69.

*Nautical assessors.*—See *The Dunkeld*, W. N. (1876), 66.

- (37.) The rules, orders, and practice of any Court whose jurisdiction is transferred to the High Court of Justice or Court of Appeal, relating to costs, and the allowance of the fees of solicitors and attorneys, and the taxation of costs, existing prior to the commencement of the principal Act, shall, in so far as they are not inconsistent with the principal Act and these Rules, remain in force and be applicable to costs of the same or analogous proceedings, and to the allowance of the fees of solicitors of the Supreme Court and the taxation of costs in the High Court of Justice and Court of Appeal.

Preservation of existing practice.

[Rule 28.]

See, on the construction of this rule, *Pringle v. Gloag*, 10 Ch. D. 676.

- (38.) As to all fees or allowances which are discretionary, the same are, unless otherwise provided, to be allowed at the discretion of the taxing officer, who, in the exercise of such discretion, is to take into consideration the other fees and allowances to the solicitor and counsel, if any, in respect of the work to which any such allowance

Discretionary allowances and costs of signing judgment.

[Rule 29.]

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applies, the nature and importance of the cause or matter, the amount involved, the interest of the parties, the fund or persons to bear the costs, the general conduct and costs of the proceedings, and all other circumstances: and where a party is entitled to sign judgment for his costs, the taxing officer, in taxing the costs, may allow a fixed sum for the costs of the judgment.

*Effect of direction to tax.*—A direction to tax does not prevent the taxing officer from disallowing all costs, if, in his opinion, none ought to be allowed: *Simmons v. Storer*, 14 Ch. D. 154.

*Costs of counsel.*—As to retainers and refreshers, see rr. 44, 48. As to two counsel, see rr. 46, 47. As to conferences with counsel, see r. 45. Formerly these matters were discretionary.

As to costs of a third counsel, see *Mason v. Brentini*, 42 L. T. 726; *Kirkwood v. Webster*, 9 Ch. D. 239; *Wigman v. Corcoran*, 41 L. T. 792; *Re Broad*, 15 Q. B. D. 420 (solicitor and client); and see note to r. 47, *infra*.

*Costs of short-hand notes.*—As to the costs of short-hand notes in the High Court, see *Kirkwood v. Webster*, 9 Ch. D. 239; *Watson v. G. W. Ry.*, 6 Q. B. D. 163; *Marcus v. General Steam Navigation Co.*, 35 L. T. 353. As to short-hand notes in the Court of Appeal, see *Hill v. Met. Asylums Board*, 49 L. J., Q. B. 668; *Re Duchess of Westminster Co.*, 10 Ch. D. 307; *Ashworth v. Outram*, 9 Ch. D. 483; *Earl De la Warr v. Miles*, 19 Ch. D. 80. As to costs of short-hand notes of judgment of the Court below, for use of the Court of Appeal, see *Humphery v. Sumner*, 55 L. T. 649. As to short-hand notes at a reference, see *Wells v. Mitcham Gas Co.*, 4 Ex. D. 1.

*Unusual expense.*—In a taxation between solicitor and client, any “unusual expense” will not be allowed unless the authority of the client has been obtained, and he has been informed that the costs may fall upon him in any event: *Re Blyth & Fanshawe*, 10 Q. B. D. 207; *Re Broad*, 15 Q. B. D. 420; *Re Storer*, 26 Ch. D. 189.

Delivery of  
objections to  
taxation.

[Cf. Rule 30.]

- (39.) Any party who may be dissatisfied with the allowance or disallowance by the taxing officer, in any bill of costs taxed by him, of the whole or any part of any items, may, at any time before the certificate or allocatur is signed, deliver to the other party interested therein, and carry in before the taxing officer, an objection in writing to such allowance or disallowance, specifying therein by a list, in a short and concise form, the items, or parts thereof, objected to, and the grounds and reasons for such objections, and may thereupon apply to the taxing officer to review the taxation in respect of the same.

Under the repealed rule it was not necessary that the grounds for the objections should be stated: *Simmons v. Storer*, 14 Ch. D. 154, which is now obsolete. For an example of objections to taxation, see *Turnbull v. Janson*, 3 C. P. D. 264.

*Objection by person not a party.*—A person not a party to the making of an order for taxation, who desires to review the taxation, ought to apply to have the order set aside: *Charlton v. Charlton*, 31 W. R. 237.

*Objection to principle of taxation.*—See *Sparrow v. Hill*; *Re Castle*, cited under r. 41, *infra*.

*Reference by one Master to another.*—Where a Master of the Q. B. D. sends to a Chancery taxing master part of the bill, the latter will report the result to the Common Law Master. If objections are carried in to the Chancery items, they can be referred to the Chancery Master, who will state his reasons, and the Common Law Master will then give his allocatur for the whole bill: *Ross v. Ashwin*, W. N. (1884), 86.



- (40.) Upon such application the taxing officer shall reconsider and review his taxation upon such objections, and he may, if he shall think fit, receive further evidence in respect thereof, and, if so required by either party, he shall state, either in his certificate of taxation or allocatur, or by reference to such objection, the grounds and reasons of his decision thereon, and any special facts or circumstances relating thereto.

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Review of  
taxation by  
taxing officer.  
[Rule 31.]

This rule is taken from C. O. XL., r. 34.

- (41.) Any party who may be dissatisfied with the certificate or allocatur of the taxing officer, as to any item or part of an item which may have been objected to as aforesaid, may within *fourteen days* from the date of the certificate or allocatur, or such other time as the Court or Judge, or taxing officer, at the time he signs his certificate or allocatur may allow, apply to a Judge at Chambers for an order to review the taxation as to the same item or part of an item, and the Judge may thereupon make such order as the Judge may think just; but the certificate or allocatur of the taxing officer shall be final and conclusive as to all matters which shall not have been objected to in manner aforesaid.

Application to  
Judge for  
review of  
taxation.

[Rule 32.]

**REVIEW OF TAXATION.**—See Dan. Pr., pp. 1259—1261; Morgan & Wurtzburg, pp. 479—481; 1 Seton, pp. 626—636. For form of summons, see Dan. Forms, p. 619.

*Discretion of taxing master.*—Unless the taxing officer has decided upon a wrong principle, the Judge will not ordinarily interfere with the way in which he has exercised his discretion: *The Neera*, 5 P. D. 118; *Hargreaves v. Scott*, 4 C. P. D. 21; *Brown v. Sewell*, 16 Ch. D. 517; *Ager v. Blacklock*, 56 L. T. 890. “Except in the case of gross overcharge (*Smith v. Buller*, 19 Eq. 473), the Court on an application to review, will only determine questions which involve some principle, and not those relating to *quantum* only, which will be left to the discretion of the taxing master (*Re Catlin*, 18 Beav. 508; *Friend v. Solly*, 10 Beav. 329; *Re Congreve*, 4 Beav. 87; *Turner v. Turner*, 7 W. R. 573; *Re Hubbard*, 23 Beav. 481; *A.-G. v. Lord Carrington*, 6 Beav. 454; *Alsop v. Lord Oxford*, 1 M. & K. 564; *A.-G. v. Drapers’ Co.*, 9 Eq. 69; *Re Mortimer*, Ir. R., 4 Eq. 96)”: Morgan & Wurtzburg, p. 480. Where, in a heavy action for damage by collision, the registrar reduced the fees paid to counsel, the Court allowed the original fees: *The City of Lucknow*, 51 L. T. 907.

*Costs.*—See *Sturge v. Dimsdale*, 9 Beav. 170; *Re Catlin*, 18 Beav. 508; *Re Colquhoun*, 5 De G., M. & G. 35; *Re London, Birmingham & Bucks Ry.*, 6 W. R. 141; Dan. Pr., pp. 1244, 1245; Morgan & Wurtzburg, p. 481.

*“Final and Conclusive.”*—Objections need not be carried in where the ground of review is that the taxing officer has proceeded on a wrong principle, and specific items are not objected to, but the Court has jurisdiction to vary or discharge the certificate on summons: *Re Castle*, 35 W. R. 621; *Sparrow v. Hill*, 7 Q. B. D. 362. A point not raised in the objections carried in before the taxing master cannot be taken upon the hearing of a summons to review the taxation: *Re Nation*, 57 L. T. 648.

*Staying payment of fund out of Court.*—Where the costs were directed to be paid to the solicitor of a party who afterwards issued a summons to review the taxation, the Court refused an application by the plaintiff to stay payment of such costs pending the result of the summons to review: *Re Barber*, 54 L. T. 728.

- (42.) Such application shall be heard and determined by the Judge upon the evidence which shall have been brought in before the taxing officer, and no further evidence shall

Evidence on  
review of  
taxation.  
[Rule 33.]

Order LXV.  
r. 27.

be received upon the hearing thereof, unless the Judge shall otherwise direct.

This rule is taken from C. O. XL., r. 36.

Allowances in District Registries.

[Rule 34.]

- (43.) When a writ of summons for the commencement of an action shall be issued from a District Registry, and when an action proceeds in a District Registry, all fees and allowances, and rules and directions relating to costs, which would be applicable to such proceeding if the writ of summons were issued at the Central Office, and if the action proceeded in London, shall apply to such writ of summons issued from and other proceedings in the District Registry.

By O. XXXV., r. 4, costs, unless otherwise ordered, are to be taxed in the District Registry. See, for an example, *The Neera*, 5 P. D. 118. In administration actions in District Registries the Court will, except under special circumstances, order the taxation to be made by the Taxing Master in London, but the Paymaster-General is bound to act on the District Registrar's certificate when the Court has allowed taxation in the District Registry: *Wilson v. Alltree*, 27 Ch. D. 242.

Disallowance of retaining fees.

- (44.) No retaining fee to counsel shall be allowed on taxation as between party and party.

See, however, r. 51.

Allowances of counsel's fees for settling, &c.

- (45.) Fees for conferences are not to be allowed in any cause or matter in addition to the solicitor's and counsel's fees for drawing and settling, or perusing any pleadings, affidavits, deeds, or other proceedings or abstracts of title, or for advising thereon, unless it shall appear to the taxing officer for some special reason that a conference was necessary or proper.

Compare r. 22 of this Order and also sub-rule (15).

One counsel in County Court cases.

- (46.) In any case in which under Rule 12 of this Order the scale of costs in County Courts is applicable, the costs of briefing more than one counsel shall not be allowed, unless the taxing officer shall, for special reasons, be of opinion that briefing more than one counsel was proper.

Rule 12 applies to actions on contract where not more than £50 is recovered.

Allowance of two junior counsel.

- (47.) Where the costs of retaining two counsel may properly be allowed, such allowance may be made although both such counsel may have been selected from the outer bar.

This rule is taken from C. O. XL., r. 20.

*Costs of two counsel.*—The costs of two counsel ought generally to be allowed: *Llanover v. Homfray*, W. N. (1884), 134. There is no universal rule that in an arbitration the fees of one counsel only should be allowed: *Orient Steam Co. v. Ocean Insurance Co.*, 35 W. R. 771. As to cases in which such costs have been allowed or disallowed, see *Morgan & Wurtzburg*, pp. 489—491.

*Costs of three counsel.*—See *Morgan & Wurtzburg*, pp. 491—493. On a taxation between party and party, special circumstances must be shown to secure the allowance of the costs of more than two counsel: *Pearce v. Lindsay*, 1 De G., F. & J. 573; *Smith v. Buller*, 19 Eq. 473; *Kirkwood v. Webster*, 9 Ch. D. 239; *Mason v. Brentini*, 42 L. T. 726. In the case of a heavy collision, where damage



to the extent of £2,000 had been done, Butt, J., allowed the costs of a third counsel: *The Mammoth*, 9 P. D. 126. In *Campbell v. Campbell*, W. N. (1887), 83, the costs of a third counsel were disallowed. On a taxation between *solicitor and client* the general rule is that the costs of only two counsel will be allowed: *Downing College Case*, 3 M. & Cr. 474.

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r. 27.

*Unusual expense.*—Employment of a third counsel is an “unusual expense” within the principle of the rule laid down in *Re Blyth and Fanshawe*, 10 Q. B. D. 207, and therefore, even if a solicitor has obtained his client’s sanction to the employment of a third counsel on an appeal, the costs will not be allowed on taxation between solicitor and client, unless the solicitor has explained to the client that the costs will probably not be allowed as between party and party: *Re Broad*, 15 Q. B. D. 420.

*Counsel called within the bar.*—Where before trial the junior counsel in the case was called within the bar, and a third counsel was employed, the fees of the leading Queen’s counsel were disallowed: *Parish v. Poole*, 34 W. R. 365.

- (48.) As to refresher fees, when any cause or matter is to be tried or heard upon *vivâ voce* evidence in open Court, if the trial shall extend over more than one day, and shall occupy, either on the first day only, or partly on the first and partly on a subsequent day or days, more than *five hours*, without being concluded, the taxing officer may allow, for every clear day subsequent to that on which the five hours shall have expired, the following fees: Refreshers.

To the leading counsel . . . . .	from 5 to 10 guineas.
To the second, if three counsel . . . . .	„ 3 to 7 „
To the third, if three counsel, or the second if only two . . . . .	„ 3 to 5 „

The like allowances may be made where the evidence in chief is not taken *vivâ voce*, if the trial on hearing shall be substantially prolonged beyond such period of *five hours*, to be so computed as aforesaid, by the cross-examination of witnesses whose affidavits or depositions have been used:

Provided that in the taxation of costs between solicitor and client the taxing officer shall be at liberty to allow larger fees, under special circumstances to be stated by him.

This rule was introduced in 1883, except the proviso, which was added by R. S. C., Dec., 1886, r. 4.

*Refreshers.*—As to the former practice concerning refreshers, see *Turnbull v. Janson*, 3 C. P. D. 264; *Harrison v. Waring*, 11 Ch. D. 206; *The Neera*, 5 P. D. 118.

*Discretion of master.*—The master has a discretion under this rule: *Smith v. Wills*, 34 W. R. 30; and has power to increase the fees payable to counsel on briefs by allowing refreshers, where the fees and refreshers taken as a whole do not exceed the amount which would have been allowed if originally marked as fees on the briefs: *Edgington v. Fitzmaurice*, 33 W. R. 911, at p. 913. If the case takes more than one day, and occupies more than five hours, refreshers will be allowed: *Wicksteed v. Biggs*, 52 L. T. 428. Where a case occupied four whole days and about three hours on a fifth day, and subsequently the case was reheard and evidence given on one point on a sixth day, it was held that the taxing-master should have allowed refreshers for the sixth day, though the case occupied less than five hours on the fifth day: *Boswell v. Coaks*, 36 Ch. D. 444. Refreshers may be allowed on an argument in the C. A.: *Svensden v. Wallace*, 16 Q. B. D. 27; though it seems that the discretion vested in the taxing master in this respect is not in terms to allow daily refreshers as fixed sums,

**Order LXV.  
r. 27.**

but in a proper case to allow an addition to the fees of counsel as originally marked: *Easton v. London Joint Stock Bank*, 38 Ch. D. 25. Term refreshers may be allowed: *Levetus v. Newton*, 28 Sol. J. 166.

*Taxation between solicitor and client.*—The proviso at the end of the rule was introduced to meet the difficulty experienced in *Re Harrison*, 33 Ch. D. 52, where it was held that the rule applied to taxations between solicitor and client, and that the authority, express or implied, of the client was required to enable the solicitor to pay fees in excess of those allowable under this rule.

Premature  
delivery of  
briefs.

- (49.) Where a cause or matter shall not be brought on for trial or hearing, the costs of and consequent on the preparation and delivery of briefs shall not be allowed if the taxing officer shall be of opinion that such costs were prematurely incurred.

Compare r. (29).

*Costs of abandoned motion, &c.*—As to costs of an abandoned motion, or on discontinuance of an action, see *Harrison v. Leutner*, 16 Ch. D. 559; *Thomas v. Palin*, 21 Ch. D. 360.

Where cause  
struck out.

- (50.) Where a cause or matter which stands for trial is called on to be tried, but cannot be decided by reason of a want of parties or other defect on part of the plaintiff, and is therefore struck out of the paper, and the same cause is again set down, the defendant shall be allowed the taxed costs occasioned by the first setting down, although he does not obtain the costs of the cause or matter.

This rule is taken from C. O. XL., r. 21.

Fees to coun-  
sel's clerks.

- (51.) The following fees are to be allowed to counsel's clerks:—

	£	s.	d.
Upon a fee under 5 guineas . . . . .	0	2	6
5 guineas and under 10 guineas . . . . .	0	5	0
10 guineas and under 20 guineas . . . . .	0	10	0
20 guineas and under 30 guineas . . . . .	0	15	0
30 guineas and under 50 guineas . . . . .	1	0	0
50 guineas and upwards per cent. . . . .	2	10	0
On consultations, senior's clerk . . . . .	0	5	0
On consultations, junior's clerk . . . . .	0	2	6
On conferences . . . . .	0	5	0
On retainers (where allowed):			
General retainer . . . . .	0	10	6
Common retainer . . . . .	0	2	6

This establishes for all divisions what was substantially the old Common Law scale, except that the senior clerk's fee on consultations is reduced by 2s. 6d. Having regard to rule (44) the provision as to retainer seems only to apply to taxations as between solicitor and client.

Voucher of  
counsel's fees  
necessary.

- (52.) No fee to counsel shall be allowed on taxation unless vouched by his signature.

This rule is not retrospective: *Perks v. Gillott*, W. N. (1883), 189.

Office copies  
of affidavits,  
when unneces-  
sary.

- (53.) In cases in which an original affidavit can be used, and to which Order XXXVIII., Rule 15, applies, it shall not be necessary to take an office copy.

See O. XXXVIII., r. 15, *ante*, p. 324.



(54.) It shall not be necessary to take an office copy of an affidavit of discovery of documents, and the copy delivered by the party filing it may be used as against such party.

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r. 27.

(55.) Where, in proceedings before the taxing officer, any party is guilty of neglect or delay, or puts any other party to any unnecessary or improper expense relative to such proceedings, the taxing officer may direct such party or his solicitor to pay such costs as he may think proper, or deal with them under Regulation 21.

Office copy of affidavit of discovery unnecessary.  
Solicitor personally to pay costs of neglect or improper conduct.

Compare C. O. XXXV., r. 23, which applied to Chamber proceedings. The present rule is general.

(56.) Where in any cause or matter any bill of costs is directed to be taxed for the purpose of being paid or raised out of any fund or property, the taxing officer may, if he shall consider there is a reasonable ground for so doing, require the solicitor to deliver or send to his clients, or any of them, free of charge, a copy of such bill, or any part thereof, previously to such officer completing the taxation thereof, accompanied by any statement such officer may direct, and by a letter informing such client that the bill of costs has been referred to the taxing officer, giving his name and address for taxation, and will be proceeded with at the time the officer shall have appointed for this purpose, and such officer may suspend the taxation for such time as he may consider reasonable.

Suspension of taxation in certain cases.

(57.) The taxing officer shall have power to limit or extend the time for any proceeding before him, and where, by any general order, or any order of the Court or a Judge, a time is appointed for any proceeding before or by a taxing officer, unless the Court or Judge shall otherwise direct, such officer shall have power from time to time to extend the time appointed upon such terms (if any) as the justice of the case may require, and although the application for the same is not made until after the expiration of the time appointed, it shall not be necessary to make a certificate or order for this purpose, unless required for any special purpose.

Extension of time for taxation.

Compare O. LXIV., r. 7, *ante*, p. 469.

(58.) Every bill of costs which shall be left for taxation shall be indorsed with the name and address of the solicitor by whom it is so left, and also the name and address of the solicitor, if any, for whom he is agent, including any solicitor who is entitled or intended to participate in the costs to be so taxed.

Indorsement of bill of costs.

Order LXVI.  
rr. 1—7.

ORDER LXVI.

NOTICES, PRINTING, PAPER, COPIES, OFFICE COPIES, MINUTES, &c.

1003.  
When notices  
to be in writ-  
ing.  
[O. LVI., r. 1.]  
1004.  
Foolscap  
paper.

1. All notices required by these Rules shall be in writing, unless expressly authorised by the Court or a Judge to be given orally.

2. All accounts, copies, and papers left at Chambers shall be written upon foolscap paper, bookwise, unless the nature of the document renders it impracticable.

This rule is taken from Chanc. Reg., Aug. 8, 1857, r. 17.

1005.  
Printing.  
[O. LVI., r. 2.]

3. Proceedings required to be printed shall be printed on cream wove machine drawing foolscap folio paper, 19 lbs. per mill ream, or thereabouts, in pica type leaded, with an inner margin about three-quarters of an inch wide, and an outer margin about two inches and a half wide.

1006.  
Affidavits.  
[O. LVI., r. 3.]

4. Any affidavit may be sworn to either in print or in manuscript, or partly in print and partly in manuscript.

For regulations as to affidavits generally, see O. XXXVIII., *ante*, p. 320.

1007.  
Depositions to  
be printed.  
[R. S. C.,  
Costs, O. I.]

5. Where any written deposition of a witness has been filed, such deposition shall be printed, unless otherwise ordered.

See, as to depositions, O. XXXVII., Part II., and O. XXXVIII., *ante*, pp. 309, 320.

1008.  
Depositions  
and affidavits  
used before  
trial.  
[R. S. C.,  
Costs, O. II.]

6. The Rules of Court as to printing depositions and affidavits to be used on a trial shall not apply to depositions and affidavits which have previously been used upon any proceeding without having been printed.

1009.  
Regulations as  
to printing.  
[R. S. C.,  
Costs, O. V.]

7. Where, pursuant to these Rules, any pleading, notice, special case, petition of right, deposition, or affidavit is to be printed, and where any printed or other office copy of any such document is to be taken, the following regulations shall be observed:

See *The Mammoth*, 9 P. D. 126.

Who to print.

(a.) The party on whose behalf the deposition or affidavit is taken and filed is to print the same in the manner provided by Rule 3 of this Order:

Copy.

(b.) To enable the party printing to print any deposition or affidavit, the officer with whom it is filed shall on demand deliver to such party a copy written on draft paper on one side only:

Copies to other  
party.

(c.) The party printing shall, on demand in writing, furnish to any other party any number of printed copies, not exceeding ten, upon payment therefor at the rate of 1*d.* per folio for one copy, and  $\frac{1}{2}$  *d.* per folio for every other copy:

Credit for  
copies.

(d.) As between a solicitor delivering any printed copies and his



client, credit shall be given by the solicitor for the whole amount payable by any other party for such printed copies :

Order LXVI.  
r. 7.

- (e.) The party entitled to be furnished with a print shall not be allowed any charge in respect of a written copy, unless the Court or a Judge shall otherwise direct : Disallowance of costs of written copies.
- (f.) Except as provided by Order LV., Rule 48, the party by or on whose behalf any deposition, affidavit, or certificate is filed shall leave a copy with the officer with whom the same is filed, who shall examine it with the original and mark it as an office copy ; such copy shall be a copy printed as above provided where such deposition or affidavit is to be printed : Office copies.

By O. LV., r. 48, claimants in Chambers in the Chancery Division are not required to take office copies, but the person who examines the claims is to take such copies.

- (g.) The party or solicitor who has taken any printed or written office copy of any deposition or affidavit is to produce the same upon every proceeding to which the same relates : Production of office copies.
- (h.) Where any party is entitled to a copy of any deposition, affidavit, proceeding, or document filed or prepared by or on behalf of another party, which is not required to be printed, such copy shall be furnished by the party by or on whose behalf the same has been filed or prepared : Copies where not printed.
- (i.) The party requiring any such copy, or his solicitor, is to make a written application to the party by whom the copy is to be furnished, or his solicitor, with an undertaking to pay the proper charges, and thereupon such copy is to be made and ready to be delivered at the expiration of *twenty-four hours* after the receipt of such request and undertaking, or within such other time as the Court or a Judge may in any case direct, and is to be furnished accordingly upon demand and payment of the proper charges : Application for written copy.
- (j.) In the case of an *ex parte* application for an injunction or writ of *ne exeat regno*, the party making such application is to furnish copies of the affidavits upon which it is granted upon payment of the proper charges immediately upon the receipt of such written request and undertaking as aforesaid, or within such time as may be specified in such request, or may have been directed by the Court or a Judge : *Ex parte* application for injunction or writ *ne exeat*.

As to *ne exeat regno*, see note to O. LXIX., r. 1, *post*, p. 510.

- (k.) It shall be stated in a note at the foot of every affidavit filed on whose behalf it is so filed, and such note shall be printed on every printed copy of an affidavit or set of affidavits, and copied on every office copy and copy furnished to a party : Filing note on affidavit.
- (l.) The name and address of the party or solicitor by whom any copy is furnished is to be indorsed thereon in like manner Indorsement of address.

**Order LXVI.**  
**rr. 7—9.**

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Numbering  
of folios.

Proceedings  
on failure of  
party to fur-  
nish copies.

Expense of  
printing and  
copies.

1010.  
Minutes of  
documents  
filed in Admi-  
ralty actions.

1011.  
Minute book  
in Admiralty  
actions.

as upon proceedings in Court, and such party or solicitor is to be answerable for the same being a true copy of the original, or of an office copy of the original, of which it purports to be a copy, as the case may be :

(m.) The folios of all printed and written office copies, and copies delivered or furnished to a party, shall be numbered consecutively in the margin thereof, and such written copies shall be written in a neat and legible manner on the same paper as in the case of printed copies :

(n.) In case any party or solicitor who shall be required to furnish any such written copy as aforesaid shall either refuse or, for *twenty-four hours* from the time when the application for such copy has been made, neglect to furnish the same, the person by whom such application shall be made shall be at liberty to procure an office copy from the office in which the original shall have been filed, and in such case no costs shall be payable to the solicitor so making default in respect of the copy so applied for :

(o.) Where, by any order of the Court (whether of appeal or otherwise) or a Judge, any pleading, evidence or other document is ordered to be printed, the Court or Judge may order the expense of printing to be borne and allowed, and printed copies to be furnished by and to such parties and upon such terms as shall be thought fit.

**8.** On filing any instrument or document in Admiralty actions, the solicitor shall state, in writing, on a printed form called a minute, to be obtained in the Admiralty Registry, the nature of the instrument or document filed, and the date of the filing thereof.

This rule is taken from Adm. Rules, 1859, No. 160.

**9.** In Admiralty actions a record of all such minutes as in the last preceding Rule mentioned, and of all actions commenced and appearances entered, and of all orders of the Court, shall be entered in a book to be kept in the Admiralty Registry, called the "Minute Book."

This rule is taken from Adm. Rules, 1859, No. 161.

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**ORDER LXVII.**

**I. SERVICE OF ORDERS, &c.**

**Order LXVII.**  
**r. 1.**

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1012.  
When office  
copy of order  
may be served.

**1.** Except in the case of an order for attachment, it shall not be necessary to the regular service of an order that the original order be shown if an office copy of it be exhibited.

This Order was introduced in 1883. The only provision in the repealed rules relating to the mode of serving orders was that contained in O. XIX., r. 6 (now O. XIX., r. 10).



2. All writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite shall be sufficiently served if left within the prescribed hours, at the address for service of the person to be served as defined by Orders IV. and XII., with any person resident at or belonging to such place.

By s. 100 of S. C. Jud. Act, 1873, *ante*, p. 63, "pleading" includes petition. Leaving summons in a letter-box is not good service: *Jimenez v. Owen*, W. N. (1883), 232.

*Prescribed hours.*—See O. LXIV., r. 11, *ante*, p. 470.

3. Notices sent from any office of the Supreme Court may be sent by post; and the time at which the notice so posted would be delivered in the ordinary course of post shall be considered as the time of service thereof, and the posting thereof shall be a sufficient service.

This rule was introduced in 1883. Compare s. 142 of the Bankruptcy Act, 1883. A similar provision existed in Adm. Rules of 1859, No. 153.

4. Where no appearance has been entered for a party, or where a party or his solicitor, as the case may be, has omitted to give an address for service as required by Orders IV. and XII., all writs, notices, pleadings, orders, summonses, warrants, and other documents, proceedings, and written communications in respect of which personal service is not requisite may be served by filing them with the proper officer.

This rule was introduced in 1883. Compare O. XIX., r. 10, *ante*, p. 208.

5. Where personal service of any writ, notice, pleading, order, summons, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, the service shall be effected as nearly as may be in the manner prescribed for the personal service of a writ of summons.

As to personal service of a writ of summons, see O. IX., r. 2, *ante*, p. 145.

6. Where personal service of any writ, notice, pleading, summons, order, warrant, or other document, proceeding, or written communication is required by these Rules or otherwise, and it is made to appear to the Court or a Judge that prompt personal service cannot be effected, the Court or Judge may make such order for substituted or other service, or for the substitution of notice for service by letter, public advertisement, or otherwise, as may be just.

Compare O. IX., r. 2, *ante*, p. 145; and O. LV., r. 35, *ante*, p. 415.

*Foreign service.*—In *Van der Kan v. Ashworth*, W. N. (1884), 58; *Credits Gerundense v. Van Weede*, 12 Q. B. D. 171, service of an interpleader summons out of the jurisdiction was allowed. See, as to service out of the jurisdiction generally, O. XI., *ante*, p. 151; *Re Busfield*, 32 Ch. D. 123; *Re Anglo-African Steamship Co.*, 32 Ch. D. 348; *Re Nathan Newman & Co.*, 35 Ch. D. 1. "We doubt whether this rule has any application for service out of the jurisdiction. But if it has, it is limited in terms to cases where the writ itself can be personally served as a matter of law, but where it cannot, from circumstances, be promptly served personally, in matter of fact." *Field v. Bennett*, 56 L. J., Q. B. 89, per Coleridge, C. J.

*Substituted service.*—The principle on which substituted service is directed is that the person substituted must either be authorized to receive service, or else

Order LXVII.  
rr. 2—6.

1013.  
Service of documents where personal service not necessary.

1014.  
Service by post of Supreme Court notices.

1015.  
Service by filing in case of non-appearance.

1016.  
Personal service.

1017.  
Substituted service.

**Order LXVII.  
rr. 6—14.**

be such a person as will certainly communicate the fact of service to the party himself: *Re Slade*, 30 W. R. 28.

*Service of orders.*—See Dan. Pr., pp. 876—879.

1018.

Service on  
solicitors after  
appearance in  
person.

7. Where a party after having sued or appeared in person has given notice in writing to the opposite party or his solicitor, through a solicitor, that such solicitor is authorized to act in the cause or matter on his behalf, all writs, notices, pleadings, summonses, orders, warrants, and other documents, proceedings, and written communications which ought to be delivered to or served upon the party on whose behalf the notice is given shall thereafter be delivered to or served upon such solicitor.

As to change of solicitor, see O. VII., r. 3, *ante*, p. 143.

1019.

Service on  
solicitor of  
person not a  
party.

8. Where a person who is not a party appears in any proceeding either before the Court or in Chambers, service upon the solicitor in London by whom such person appears, whether such solicitor acts as principal or agent, shall be deemed good service except in matters requiring personal service.

This rule is taken from C. O. III., r. 7.

1020.

Affidavits of  
service.

9. Affidavits of service shall state when, where and how, and by whom, such service was effected.

This rule is taken from C. O. X., r. 8.

## II. ADMIRALTY ACTIONS.

1021.

Issue of instru-  
ments in  
Admiralty  
actions.

10. Every instrument, under the seal of the Court, and prepared in the Admiralty Registry, shall be issued on a notice filed by the solicitor applying for the same, and shall bear date on the day on which it is issued.

This and the three next succeeding rules are taken from Adm. Rules, 1859, Nos. 165 to 1868.

1022.

Time for  
service.

11. Every instrument shall be served within *twelve months* from the day on which it bears date, otherwise the service thereof shall not be valid.

1023.

Days of  
service.

12. No instrument except a warrant shall be served on a Sunday, Good Friday, or Christmas Day.

1024.

Service by  
marshal.

13. Every warrant or other instrument required to be served by the Marshal shall be left by the solicitor taking out the same with a notice in the Admiralty Registry.

1025.

Verification of  
service.

14. The service of any instrument by the Marshal shall be verified by his certificate. The service of any instrument by a solicitor, his clerk or agent, shall be verified by an affidavit.

This rule is taken from Adm. Rules, 1859, No. 172.

Service of a writ *in rem* by a solicitor or his clerk, and not by the marshal or his substitute, was held to be a valid service, and the affidavit of service made by the solicitor's clerk who had served the writ was treated as sufficient: *The Solis*, 10 P. D. 62.



ORDER LXVIII.

APPLICATION OF RULES IN CROWN, REVENUE AND MATRIMONIAL CASES.

Ord. LXVIII.  
rr. 1, 2.

1. Subject to the provisions of this Order, nothing in these Rules, save as expressly provided, shall affect the procedure or practice in any of the following causes or matters :—

1026.  
Excepted  
proceedings.  
[O. LXII. r. 1.]

- (a.) Criminal proceedings;
- (b.) Proceedings on the Crown side of the Queen's Bench Division;

See *Reg. v. Justices of Pirehill*, 14 Q. B. D. 13.

*Prohibition.*—Inasmuch as this Order prevents O. XVI., r. 22, from applying to proceedings on the Crown side of the Q. B. D., there is no jurisdiction to admit a party to proceedings in prohibition to proceed as a pauper: *Mulleneisen v. Coulson*, 21 Q. B. D. 3.

- (c.) Proceedings on the Revenue side of the Queen's Bench Division;
- (d.) Proceedings for Divorce or other Matrimonial Causes.

*Semble*, that an application for leave to administer interrogatories between the parties to a suit for nullity of marriage ought not to be made to a Registrar of the Divorce Division, but it ought to be made in the first instance to one of the Judges of the Court: *Harvey v. Lovekin*, 10 P. D. 122.

2. The following Orders shall, as far as they are applicable, apply to all civil proceedings on the Crown side of the Queen's Bench Division, including mandamus and prohibition, and also to *quo warranto*, and to all proceedings on the Revenue side of the said Division; namely,—

1027.  
Application of  
certain orders  
to Crown side  
and Revenue  
proceedings.  
[Cf. O. LXII.  
rr. 2, 3, and 4.]

- (a.) Order XXVIII. (Amendment);
- (b.) Order XXXIV. (Special case);
- (c.) Order XXXVIII. (Affidavits);
- (d.) Order LII. (Motions);
- (e.) Order LVIII. (Appeals);
- (f.) Order LXIV. (Time);
- (g.) Order LXV. (Costs);
- (h.) Order LXVI. (Notices, &c.);
- (i.) Order LXX. (Non-compliance);

Provided that Order LVIII. shall not apply to *quo warranto*.

*Effect of Rule.*—This rule extends the list of orders applied to Crown side and revenue proceedings by adding the orders as to affidavits and motions. The effect of applying O. XXXIV. generally instead of as in the repealed O. LXII., r. 3, is to make it applicable to special cases stated under the Taxes Management Act, 1880, which are stated by commissioners and not by the parties.

The Crown Office Rules, 1886, further extend the orders applicable to civil proceedings on the Crown side to O. XLII. (Execution); see r. 217.

By s. 6 of the Statute Law Revision and Civil Procedure Act, 1881 (44 & 45 Vict. c. 59) :—

“The enactments relating to the making of rules of Court contained in the Supreme Court of Judicature Act, 1875, and the Acts amending it shall extend and apply to . . . all proceedings by or against the Crown.”

*Case stated by sessions.*—Where a case is stated by sessions upon appeal against a poor rate, the proceeding is a civil proceeding, and the costs of it are accordingly in the discretion of the Court by virtue of the application of O. LXV.: *Clark v. Fisherton Angar*, 6 Q. B. D. 139; but a case stated upon appeal against a summary conviction by justices under the Weights and Measures Acts is not a civil proceeding for this purpose: *Reg. v. Baxendale*, 6 Q. B. D. 144, n.

Ord. LXVIII. As to what proceedings are civil or criminal, see further the note, s. 47 of rr. 2—4. S. C. Jud. Act of 1873, *ante*, p. 41.

*Quo warranto*.—Under the corresponding repealed rule, O. LVIII. (appeals) was applied to *quo warranto*, but this rule excludes it, apparently on the ground that *quo warranto* is a criminal proceeding: *R. v. Seal*, 5 E. & B. 1; and that, therefore, by virtue of s. 47 of S. C. Jud. Act, 1873, the judgment of the High Court is final. It is to be noted that in *Reg. v. Collins*, 2 Q. B. D. 30, a *quo warranto* information was by consent tried by a Judge without a jury, and an appeal from his judgment was entertained as if it were an ordinary civil case. The objection that the appeal did not lie was not taken.

By s. 15 of S. C. Jud. Act, 1884, proceedings in *quo warranto* are now deemed civil proceedings for purposes of appeal or otherwise.

By the Crown Office Rules, 1886, r. 216, O. LVIII., is made applicable to all civil proceedings on the Crown side, including mandamus, prohibition, and *quo warranto*.

*Certiorari*.—For forms of writs of certiorari, &c., see App. J, *post*, p. 607.

1028.  
Pleadings and proceedings in prohibition.

3. Where pleadings in prohibition are ordered, the pleadings and subsequent proceedings, including judgment and assessment of damages, if any, shall be, as nearly as may be, the same as in an ordinary action for damages.

*Prohibition*.—Prohibition is the proceeding by which the High Court is enabled to restrain inferior Courts (including the Courts Ecclesiastical) from acting in excess of their jurisdiction.

As to the line of demarcation between prohibition and appeal, see per Lord Blackburn in *Mackonochie v. Penzance*, 6 App. Cas. 424, at pp. 443, 444.

*Interlocutory order of County Court*.—No appeal lies from such an order under 13 & 14 Vict. c. 61, s. 14. If, therefore, a County Court Judge has in such an order exceeded his jurisdiction, the proper remedy is by prohibition. *Reg. v. Judge of Lincolnshire County Court*, 20 Q. B. D. 167.

*Application for writ*.—As to an application for a writ of prohibition, see Crown Office Rules, 1886, r. 81. The application is by motion for an order *nisi* or by summons before a Judge at Chambers. The order may be made absolute in the first instance: r. 82.

As under the Judicature Acts an appeal lies from this order, pleadings in prohibition will for the future hardly ever be resorted to: see *Toomer v. L. C. & D. Ry.*, 2 Ex. D. 450, at p. 458.

*Setting aside writ of prohibition*.—A Judge sitting at Chambers has jurisdiction to set aside a writ of prohibition issued out of the Petty Bag Office: *Amstell v. Lesser*, 16 Q. B. D. 187.

For form of writ, see *post*, p. 608.

1029.  
Affidavits on the Crown side in the Queen's Bench.

4. Affidavits used in applications on the Crown side of the Queen's Bench Division, shall be intituled in the Queen's Bench Division.

See Crown Office Rules, 1886, r. 7.

As to affidavits generally, see O. XXXVIII., Part I., *ante*, p. 320.

Ord. LXIX.  
r. 1.

## ORDER LXIX.

ARREST OF DEFENDANT UNDER S. 6 OF THE DEBTORS ACT, 1869.

1030.  
Form of orders.

1. An order to arrest under the 6th section of the Debtors Act, 1869 (which shall be in the Form No. 31 in Appendix K, with such variations as circumstances may require), shall be made upon affi-



davit and *ex parte*; but the defendant may at any time after arrest apply to the Court or a Judge to rescind or vary the order or to be discharged from custody, or for such other relief as may be just.

Ord. LXIX.  
rr. 1, 2.

This Order reproduces in substance the *Regulæ Generales* made in 1869 under the Debtors Act, 1869.

*Debtors Act, 1869, s. 6.*—That Act (32 & 33 Vict. c. 62) provides as follows:—  
[S. 6. After the commencement of this Act a person shall not be arrested upon mesne process in any action.]

Where the plaintiff in any action in any of Her Majesty's Superior Courts of law at Westminster, in which, if brought before the commencement of this Act, the defendant would have been liable to arrest, proves at any time before final judgment, by evidence on oath to the satisfaction of a Judge of one of those Courts, that the plaintiff has good cause of action against the defendant to the amount of fifty pounds or upwards, and that there is probable cause for believing that the defendant is about to quit England unless he be apprehended, and that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, such Judge may in the prescribed manner order such defendant to be arrested and imprisoned for a period not exceeding six months, unless and until he has sooner given the prescribed security, not exceeding the amount claimed in the action, that he will not go out of England without the leave of the Court.

When the action is for a penalty or sum in the nature of a penalty, other than a penalty in respect of any contract, it shall not be necessary to prove that the absence of the defendant from England will materially prejudice the plaintiff in the prosecution of his action, and the security given (instead of being that the defendant will not go out of England) shall be to the effect that any sum recovered against the defendant in the action shall be paid, or that the defendant shall be rendered to prison.]

*Effect of section.*—This section applies to actions in tort as well as actions in contract. As regards the first branch of the section, it has been held, that the defendant can only be arrested when his evidence is required, and that it is not sufficient that it will be difficult or impossible for the plaintiff to obtain the fruits of his judgment if the defendant is allowed to go abroad: see *Day's C. L. P. Acts*, ed. 4, p. 407; and *Yorkshire Engine Co. v. Wright*, 21 W. R. 15. And when a defendant has been arrested, he cannot be kept in prison after final judgment has been signed: *Hume v. Druryff*, L. R., 8 Ex. 214.

*Affidavit.*—The affidavit on which the application is founded should disclose the facts which the defendant is required to prove, and if the defendant will agree to admit those facts on the trial, the order will not be made: *Day's C. L. P. Acts*, ed. 4, p. 407.

For form referred to in the rule, see *post*, p. 620.

*Writ of ne exeat regno.*—The writ of *ne exeat regno* is granted to prevent a person from leaving the realm to the damage of the person to whom he is indebted until he has given security for the amount of the debt. In order to obtain the writ the demand must be pecuniary, must be actually due, and for an ascertained amount: 1 Seton, p. 316. The debt must be payable in *presenti*: *Colverson v. Bloomfield*, 29 Ch. D. 341. For form of order, see 1 Seton, p. 315.

The writ has several times been issued since the Judicature Acts, but in *Drover v. Beyer*, 13 Ch. D. 242, Jessel, M. R., said, "Under the present practice the writ of *ne exeat regno* is not to be issued except in cases which come within the provision of s. 6 of the Debtors Act, 1869."

2. An order to arrest shall before delivery to the sheriff be indorsed with the plaintiff's address for service as required by Order IV., Rules 1 and 2. Concurrent orders may be issued for arrest in different counties. The sheriff or other officer executing the order shall be entitled to the same fees as heretofore.

1031.  
Indorsement  
on order.  
Sheriff's fees.

This rule is taken from R. G. M. T., 1869, r. 2.

Ord. LXIX.  
rr. 3—7.1032.  
Security by  
defendant.

3. The security to be given by the defendant may be a deposit in Court of the amount mentioned in the order, or a bond to the plaintiff by the defendant and two sufficient sureties (or with the leave of the Court or a Judge either one surety or more than two), or, with the plaintiff's consent, any other form of security. The plaintiff may within *four days* after receiving particulars of the names and addresses of the proposed sureties, give notice that he objects thereto, stating in the notice the particulars of his objections. In such case the sufficiency of the security shall be determined by a Master, who shall have power to award costs to either party. It shall be the duty of the plaintiff to obtain an appointment for that purpose, and unless he do so within *four days* after giving notice of objection, the security shall be deemed sufficient.

This rule is taken from R. G. M. T., 1869, r. 7.

1033.  
Control of  
Court over  
security.

4. The money deposited, and the security, and all proceedings thereon, shall be subject to the order and control of the Court or a Judge.

This rule is taken from R. G. M. T., 1869, r. 8.

1034.  
Costs.

5. Unless otherwise ordered, the costs of and incidental to an order of arrest shall be costs in the cause.

This rule is taken from R. G. M. T., 1869, r. 9.

1035.  
Discharge of  
defendant on  
payment or  
security.

6. Upon payment into Court of the amount mentioned in the Order, a receipt shall be given; and upon receiving the bond or other security, a certificate to that effect shall be given, signed or attested by the plaintiff's solicitor if he have one, or by the plaintiff, if he sue in person. The delivery of such receipt, or a certificate to the sheriff or other officer executing the order, shall entitle the defendant to be discharged out of custody.

This rule is taken from R. G. M. T., 1869, r. 10.

1036.  
Indorsement  
of date of  
arrest.

7. The sheriff or other officer named in an order to arrest shall, within *two days* after the arrest, indorse on the Order the true date of such arrest.

This rule is taken from R. G. M. T., 1869, r. 11.

Order LXX.  
r. 1.

## ORDER LXX.

## EFFECT OF NON-COMPLIANCE.

1037.  
Non-compli-  
ance with  
rules.  
[O. LIX. r. 1.]

1. Non-compliance with any of these Rules, or with any rule of practice for the time being in force, shall not render any proceedings void unless the Court or a Judge shall so direct, but such proceedings may be set aside either wholly or in part as irregular, or amended, or otherwise dealt with in such manner and upon such terms as the Court or Judge shall think fit.

*Effect of Rule.*—"I have no doubt that the meaning of the rule is that the



Court or Judge may, after an irregular proceeding has been taken, either set it aside for irregularity, or amend it, or otherwise deal with it as the Court shall think fit; but it is not to be treated as void:" per Kay, J., *Petty v. Daniel*, 34 Ch. D. 172, at p. 180.

Order LXX.  
rr. 1, 2.

*Irregularity in service of writ.*—Where the original writ was not shown to the defendant at the time of service, and judgment was signed thereon, it was held that all proceedings taken under the writ must be set aside, whether they were to be treated as irregular or absolutely void: *Phillipson v. Emanuel*, 56 L. T. 858. So, too, where a writ, and not notice of the writ, was served upon a defendant who was neither a British subject nor in British dominions: *Heicetson v. Fabre*, 21 Q. B. D. 6.

*Judgment irregularly signed.*—A judgment irregularly signed is not a mere non-compliance with the rules which can be remedied under this rule: the defendant is entitled to have such a judgment set aside *ex debito justitiæ* without any terms being imposed: *Antaby v. Prætorius*, 20 Q. B. D. 764.

*Irregularity in notice of motion.*—An order obtained on a notice of motion, irregular in omitting to state that leave had been obtained to serve short notice, was allowed to stand: *Dawson v. Beeson*, 22 Ch. D. 504. A notice of motion, irregular in being given for a day not in the sittings, was allowed to be amended: *Williams v. De Boinville*, 17 Q. B. D. 180. In *Re Coulton*, 34 Ch. D. 22, such a notice was not treated as irregular (*Daubney v. Shuttleworth*, 1 Exch. D. 53, not being followed).

*Affidavits not served with notice of motion.*—Under this rule the Court heard a motion to set aside an award, notwithstanding that affidavits in support of the motion were not served with the notice of motion: *Re Wyggeston Hospital and Stevenson*, 33 W. R. 550. See also *Petty v. Daniel*, 34 Ch. D. 172.

*Writ served on wrong person.*—Where a writ has been served on a wrong person, and service is possible on the right person, leave will not be given to amend the irregularity: *Nelson v. Pastorino*, 49 L. T. 564.

*Petition or summons.*—Where an application under the Lands Clauses Act, 1845, by petition is cheaper and more expeditious than by summons, the costs of a petition will not be disallowed, though the proceeding falls within O. LV., r. 2, sub-r. 7: *Re Bethlehem Hospital*, 30 Ch. D. 541; *Re Stafford's Charity*, 57 L. T. 846. Where an application to tax a solicitor's bill of costs was made by petition instead of summons, only the same costs were allowed as on a summons: *Re Kellock*, 35 W. R. 695.

2. No application to set aside any proceeding for irregularity shall be allowed unless made within reasonable time, nor if the party applying has taken any fresh step after knowledge of the irregularity.

1038.  
No application  
after fresh  
step taken.

This rule is taken from R. G. H. T., 1853, r. 135.

*Fresh step.*—Appearance to a writ, irregular to the knowledge of the defendant, is a "fresh step" within this rule: *Mulckern v. Doerks*, 53 L. J., Q. B. 526. See also *Tozier v. Hawkins*, 15 Q. B. D. 680. Where an order was made for service of writ and notice of motion at the place of business in England of a foreigner resident out of the jurisdiction, and defendants, without formally entering an appearance, filed affidavits and opposed the motion on the merits, held that they had waived their right to object to the order as irregular: *Boyle v. Sacker*, 58 L. T. 822.

Irregularity in an affidavit was held to be cured by defendant appearing and disputing the facts alleged: *Treherne v. Dale*, 27 Ch. D. 66. An irregularity in serving an order for discovery without the indorsement provided for by O. XLI., r. 5, was held not to be waived by the issue of a summons for time to file the affidavit of documents: *Hampden v. Wallis*, 26 Ch. D. 746.

*Several causes of action joined without leave.*—Where leave has not been obtained to join several causes of action which cannot properly be joined without such leave, the defendant should apply at once to strike out the irregularity, otherwise he cannot insist on the irregularity: *Re Derbon*, 36 W. R. 667; and see *Mulckern v. Doerks*, *ubi sup.*

**Order LXX.  
rr. 3, 4.**

1039.

Objections to  
be stated in  
summons or  
notice.

1040.

Costs.

3. Where an application is made to set aside proceedings for irregularity, the several objections intended to be insisted upon shall be stated in the summons or notice of motion.

This rule is taken from R. G. H. T., 1853, r. 136.  
See *Petty v. Daniel*, 34 Ch. D. 172.

4. When a summons is taken out to set aside any process or proceeding for irregularity with costs, and the summons is dismissed generally without any special direction as to costs, it is to be understood as dismissed with costs.

This rule is taken from R. G. H. T., 1853, r. 137.

**Order LXXI.  
r. 1.****ORDER LXXI.****INTERPRETATION OF TERMS.**

1041.

Interpretation  
of terms.[Cf. O.  
LXIII.]

1. The provisions of the 100th section of the principal Act shall apply to these Rules.

In the construction of these Rules, unless there is anything in the subject or context repugnant thereto, the several words herein-after mentioned or referred to shall have or include the meanings following:—

“Originating Summons” means a summons by which proceedings are commenced without writ:

An originating summons is an action within S. C. Jud. Act, 1873, s. 100: *Re Fawsitt*, 30 Ch. D. 231; *Re Vardon's Trusts*, 55 L. J., Ch. 259.

“Person” includes a body corporate or politic:

“Probate actions” include actions and other matters relating to the grant or recall of probate or of letters of administration other than common form business:

“Proper officer” means an officer to be ascertained as follows:—

(a.) Where any duty to be discharged under the Acts or these Rules is a duty which has heretofore been discharged by any officer, such officer shall continue to be the proper officer to discharge the same:

(b.) Where any new duty is under the Acts or these Rules to be discharged, the proper officer to discharge the same shall be such officer as may from time to time be directed to discharge the same, in the case of an officer of the Supreme Court, or the High Court of Justice, or the Court of Appeal, not attached to any Division, by the Lord Chancellor, and in the case of an officer attached to any Division, by the President of the Division, and in the case of an officer attached to any Judge, by such Judge:

“Master” means a Master of the Supreme Court of Judicature:

“Receiver” includes consignee or manager appointed by or under an order of the Court:

“Taxing Officer” means Taxing Master in the Chancery Division, and the Master or person whose duty it is to tax the costs to be taxed in the other Divisions respectively:



“The Principal Act” means the Supreme Court of Judicature, Act, 1873 : Order LXXI.  
rr. 1, 2.

“The Acts” means the Supreme Court of Judicature Acts, 1873 to 1879, the Appellate Jurisdiction Act, 1876, and the Supreme Court of Judicature Act, 1881 :

“Central Office” means the Central Office of the Supreme Court of Judicature.

2. In these Rules, unless repugnant to the context, the singular number shall include the plural, and the plural number shall include the singular. 1042.  
Singular and plural.

## ORDER LXXII.

Order LXXII.  
rr. 1—3.

### GENERAL RULES.

1. No Order or Rule annulled by any former Order shall be revived by any of these Rules, unless expressly so declared. 1043.  
Non-revival  
of repealed  
orders.

By s. 6 of the Statute Law Revision and Civil Procedure Act, 1883 (46 & 47 Vict. c. 49), it is provided that no enactment impliedly repealed by the Rules of 1875, which were contained in the First Schedule to S. C. Jud. Act, 1875, shall be revived by the annulment or alteration of any of those Rules. Thus, for instance, though the rule of 1875, which abolished bills of exceptions and proceedings in error, is not revived, by virtue of this section they remain abolished.

2. Where no other provision is made by the Acts or these Rules, the present procedure and practice remain in force. 1044.  
Existing prac-  
tice when  
preserved.

*Where practice differed at law and in equity.*—It has been held that as regards matters not provided for by the rules where there was a different rule at common law and in equity with respect to the same matter, the practice which appears the more convenient will now be adopted: *Newbiggin-by-the-Sea Gas Co. v. Armstrong*, 13 Ch. D. 310; *Thomas v. Palin*, 21 Ch. D. 360, at p. 367. See, too, as to the practice on the Crown side of the Q. B. D., *Reg. v. Justices of Pirehill*, 14 Q. B. D. 13.

*Affidavit sworn abroad.*—An affidavit sworn in foreign parts out of Her Majesty's dominions before a notary public may be filed: *Cooke v. Wilby*, 25 Ch. D. 769.

3. During the period of any vacancy in the office of Lord Chancellor, and when the Great Seal is not in Commission, these Rules shall operate as if wherever the words “Lord Chancellor” are used, the words “Lord Chief Justice of England” were used; and during the period of any vacancy in the office of Lord Chief Justice of England, as if wherever the words “Lord Chief Justice of England” are used the words “Lord Chancellor” were used. 1045.  
Vacancy in  
office of L. C.  
or L. C. J.

## RULES OF THE SUPREME COURT, MAY, 1887.

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**R. S. C.**  
**May, 1887.**

1. Originating summonses may be sealed and issued in the District Registries of Liverpool and Manchester respectively, and appearances thereon shall be entered in the same respective Registries; and the provisions of the Rules of the Supreme Court, and in particular of Order LV., rr. 20 and 23, shall be applied accordingly.

2. Petitions presented in the District Registries of Liverpool and Manchester respectively, and requiring answer, shall be answered in the name of one of the District Registrars of the same respective Registries; and the Rules of the Supreme Court, and in particular O. LXII., r. 18, shall, as regards such petitions, be construed as if the District Registrars of Liverpool and Manchester respectively were mentioned in place of the Registrars of the Chancery Division.

3. These Rules may be cited as the Rules of the Supreme Court, May, 1887, and shall come into operation on the sixth day of June, 1887.

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## RULES OF THE SUPREME COURT, DECEMBER, 1887.

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Notwithstanding anything in Order LXI., r. 1, of the Rules of the Supreme Court, 1883, contained, from and after the 1st day of January, 1888,

1. So much of the Summons and Order Department of the Central Office as has hitherto formed the Court Order Department shall be amalgamated with the Associates' Department of the Central Office;

2. The Queen's Remembrancer's Department of the Central Office shall be amalgamated with the Judgments and Married Women's Acknowledgments Department of that Office, so as to form one department, which shall be called the Queen's Remembrancer's, Judgments, and Acknowledgments Department, of the Central Office; and the business shall be distributed, and shall be performed by the several officers and clerks, accordingly.

This Rule may be cited with reference to the Rules of the Supreme Court, 1883, as Order LXI., Rule 1a.

The 17th day of December, 1887.



# RULES OF THE SUPREME COURT, AUGUST, 1888.

## ORDER XXII., RULE 17.

**R. S. C.  
August, 1888.**

1. Order XXII., r. 17, of the Rules of the Supreme Court, 1883, is hereby annulled, and the following Rule shall stand in lieu thereof:—

Investment of  
cash under  
the control of  
the Court.

*Cash under the control of or subject to the order of the Court may be invested in the following securities; namely,—*

*Two and Three-quarters per Cent. Consolidated Stock (to be called after the 5th of April, 1903, Two and a Half per Cent. Consolidated Stock).*

*Consolidated Three Pounds per Cent. Annuities.*

*Reduced Three Pounds per Cent. Annuities.*

*Two Pounds Fifteen Shillings per Cent. Annuities.*

*Two Pounds Ten Shillings per Cent. Annuities.*

*Exchequer Bills.*

*Bank Stock.*

*India Three and a Half per Cent. Stock.*

*India Three per Cent. Stock.*

*Indian guaranteed railway securities.*

*Stocks of Colonial Governments guaranteed by the Imperial Government.*

*Mortgage of freehold and copyhold estates respectively in England and Wales;*

*and also, under an order of a Judge in person, in the following securities, namely,—*

*Metropolitan Consolidated Stock, Three Pounds Ten Shillings per Cent.*

*Three per Cent. Metropolitan Consolidated Stock.*

*Debenture, preference, guaranteed, or rentcharge stocks of railways in Great Britain or Ireland having for ten years next before the date of investment paid a dividend on ordinary stock or shares.*

*Registered stocks or registered bonds issued under the Local Loans Act, 1875, provided in each case that such stocks or bonds shall not be liable to be redeemed within a period of fifteen years from the date of investment.*

*Local Loans Stock under the National Debt and Local Loans Act, 1887.*

*The inscribed stock of any British colony, provided that such inscribed stock shall not at the time of investment be quoted in the official list of the London Stock Exchange at a price below one hundred and five pounds sterling for every one hundred pounds of inscribed stock*

R. S. C.  
August, 1888.

*bearing interest at the rate of four per cent. per annum, or in the case of inscribed stock bearing interest at a lower rate than four per cent. per annum below the price proportionate to one hundred and five pounds sterling for one hundred pounds of inscribed stock at four per cent. per annum.*

The Rule of the Supreme Court, November, 1888, has been substituted for the above Rule. See *post*, p. 516c.

#### ORDER XLV., RULE 10.

Garnishee order against firm having member resident within the jurisdiction.

2. "Any other person" in Order XLV., rule 1, shall include a firm, any member of which is resident within the jurisdiction, and a garnishee order may be made against any such firm in the name of the firm; and any appearance by any member then within the jurisdiction pursuant to any order made under this rule shall be a sufficient appearance by the firm.

#### ORDER XLVI., RULE 3A.

Substitution of "dividends" for "money."

3. Order XLVI., rule 3, shall be construed and have effect as if the words "dividends thereon" were substituted for the word "money."

Commencement and mode of citation of Rules.

4. These rules shall come into operation on the 24th of October, 1888, and may be cited as the Rules of the Supreme Court, August, 1888, or each rule may be cited according to the heading thereof, with reference to the Rules of the Supreme Court, 1883.

(Signed)

HALSBURY, C.  
COLERIDGE, C. J.  
ESHER, M. R.  
JAMES HANNEN, Pres. P. D. & A.  
NATH. LINDLEY, L. J.  
EDW. FRY, L. J.  
C. E. POLLOCK, B.  
H. MANISTY, J.

August, 1888.



# RULE OF THE SUPREME COURT,

## NOVEMBER, 1888.



The following Rule has been substituted for Rule 1 of the Rules of the Supreme Court, August, 1888 (p. 516a).

B. S. C.  
Nov., 1888.

### ORDER XXII., RULE 17.

1. Rule 1, of the Rules of the Supreme Court, August, 1888, is hereby annulled (except so far as it annulled Order XXII., Rule 17, of the Rules of the Supreme Court, 1883), and the following Rule shall stand in lieu thereof:—

Cash under the control of or subject to the order of the Court may be invested in the following stocks, funds, or securities; namely,—

Two and Three-quarters per Cent. Consolidated Stock (to be called after the 5th of April, 1903, Two and a Half per Cent. Consolidated Stock).

Consolidated Three Pounds per Cent. Annuities.

Reduced Three Pounds per Cent. Annuities.

Two Pounds Fifteen Shillings per Cent. Annuities.

Two Pounds Ten Shillings per Cent. Annuities.

Local Loans Stock under the National Debt and Local Loans Act, 1887.

Exchequer Bills.

Bank Stock.

India Three and a Half per Cent. Stock.

India Three per Cent. Stock.

Indian guaranteed railway stocks or shares, provided in each case that such stocks or shares shall not be liable to be redeemed within a period of fifteen years from the date of investment.

Stocks of Colonial Governments guaranteed by the Imperial Government.

Mortgage of freehold and copyhold estates respectively in England and Wales.

Metropolitan Consolidated Stock, Three Pounds Ten Shillings per Cent.

Three per Cent. Metropolitan Consolidated Stock.

**R. S. C.**  
**Nov., 1888.**

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Debenture, preference, guaranteed, or rentcharge stocks of railways in Great Britain or Ireland having for ten years next before the date of investment paid a dividend on ordinary stock or shares.

Nominal debentures or nominal debenture stock under the Local Loans Act, 1875, provided in each case that such debentures or stock shall not be liable to be redeemed within a period of fifteen years from the date of investment.

2. This rule shall come into operation on the 26th of November, 1888, and may be cited as the Rule of the Supreme Court, November, 1888, or may be cited according to the heading thereof, with reference to the Rules of the Supreme Court, 1883.

(Signed)

HALSBURY, C.  
COLERIDGE, C. J.  
ESHER, M. R.  
NATH. LINDLEY, L. J.  
EDW. FRY, L. J.  
C. E. POLLOCK, B.  
H. MANISTY, J.

November 14, 1888.



# RULES OF THE SUPREME COURT,

## GUARDIANSHIP OF INFANTS.

### GUARDIANSHIP OF INFANTS ACT, 1886.

**R. S. C.  
Guardianship  
of Infants.**

1. These Rules may be cited as "The Rules of the Supreme Court, Guardianship of Infants," and shall apply to proceedings in the High Court of Justice, including appeals, under the Guardianship of Infants Act, 1886, hereinafter called the Act.

Mode of  
citation of  
Rules.

2. Any application under the Act may be made as follows :

Mode of  
application.

(a) Where there is pending any action or other proceeding by reason whereof the infant is a ward of court, then by a summons in such action or proceeding, and in the matter of the infant.

(b) Where there is not pending any such action or other proceeding as aforesaid, then by an originating summons in the matter of the infant.

3. A summons under section 2 of the Act may be taken out by any next friend of the infant, and shall be served upon the mother of the infant.

Summons  
under sect. 2,  
upon whom to  
be served.

4. (a) A summons under section 3, sub-section (2), of the Act may be taken out by any next friend of the infant, and shall be served upon the father of the infant.

Summons  
under sect. 3,  
upon whom to  
be served.

(b) A summons under section 3, sub-section (3), of the Act may be taken out by any guardian of the infant, and shall be served upon the other guardian or guardians.

5. (a) A summons under section 5 of the Act taken out by the mother of any infant shall be served upon the father of the infant, or if he be dead upon the guardian or guardians of the infant, if any such there be, other than the mother.

Summons  
under sect. 5,  
upon whom to  
be served.

(b) A summons under section 5 of the Act taken out by the father of any infant shall be served upon the mother of the infant, or, if she be dead, upon the guardian or guardians of the infant, if any such there be, other than the father.

(c) A summons under section 5 of the Act taken out by any guardian of an infant, other than a parent, shall be served upon the other guardian or guardians of the infant, if any such there be, other than a surviving parent, and also upon the surviving parent, if any.

6. A summons under section 6 of the Act may be taken out by any next friend of the infant, and shall be served upon his guardian or guardians.

Summons  
under sect. 6,  
upon whom to  
be served.

**R. S. C.  
Guardianship  
of Infants.**

Removals and  
appeals from  
county courts.

Application  
under sect. 10,  
how made, and  
proceedings  
thereon.

Judge may  
direct service  
on other  
persons.

Evidence.

O. LIX. to  
apply to  
appeals from  
county courts  
under the Act.

Order as to  
custody pend-  
ing appeal.

Rules as to  
appeals from  
inferior courts  
to apply.

**7.** All matters relating to removals and appeals from county courts in respect of which jurisdiction is given to the High Court by the Act shall be transacted and disposed of in Court or in Chambers by or under the directions of any Judge of the Chancery Division (hereinafter called the Judge) named for that purpose by the Lord Chancellor.

**8.** The application of any party under section 10 of the Act for an order of removal from a county court to the High Court shall be by an originating summons in the Chancery Division in the matter of the infant, and shall be marked with the name of the Judge. It shall not be necessary to serve the summons upon any person. When the Judge upon hearing the summons shall (on such terms as to costs as he may think proper) have ordered the application to be removed to the High Court, the application shall be proceeded with before such Judge; and the applicant shall serve a copy of the order upon the registrar of the county court, who shall forthwith transmit all documents (if any), in the matter filed or lodged in the county court to such officer as the Judge may direct.

**9.** In any proceeding under the Act the Judge may direct such persons, other than those in these Rules respectively mentioned, to be served with the summons as he may think fit.

**10.** Upon any application under the Act for the appointment of a guardian of an infant the evidence shall show—

- (a) The age of the infant;
- (b) The nature and amount of the infant's fortune and income;
- (c) What relations the infant has.

**11.** Order LIX., rules 10, 11, 12, 13, 16 and 17, shall apply to appeals to the Chancery Division of the High Court from county courts under the Act. The appeal shall not operate as a stay of proceedings under the decision appealed from unless the county court shall so order.

**12.** The Judge may after an appeal has been entered make such orders, either ex parte or otherwise, with regard to the custody of the infant pending the appeal and otherwise as he may think proper.

**13.** Subject to these Rules, the Rules for the time being in force with respect to appeals to the Queen's Bench Division from inferior courts, and also the Rules for the time being in force with respect to appeals from the High Court to the Court of Appeal, shall, so far as practicable, apply to appeals from county courts to the High Court under the Act.

The 17th day of December, 1887.

(Signed)

HALSBURY, C.  
COLERIDGE, L.C.J.  
ESHER, M.R.  
C. E. POLLOCK, B.  
H. MANISTY, J.



# APPENDICES

## TO RULES OF THE SUPREME COURT, 1883.

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### FORMS.

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[NOTE—By s. 100 of S. C. Jud. Act, 1873, *ante*, p. 63, Rules of Court shall include forms.

By O. LXI., r. 32, the forms contained in the Appendices shall be used in or for the purposes of the Central Office with such variations as circumstances may require.

By O. LXI., r. 33, the Masters may from time to time prescribe the use in or for the purpose of the Central Office of such modified or additional forms as may be deemed expedient.

By O. XXXV., r. 24, the forms contained in the Appendices shall, as far as they are applicable, be used in and for the purposes of District Registries, with such variations as circumstances may require.]

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## APPENDIX A.

Appendix A.  
Part I.  
No. 1.

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### PART I.

#### FORMS OF WRITS OF SUMMONS, &c.

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##### No. 1.

In the High Court of Justice.  
Division.

187 . [*Here put the letter and number.*] General form  
of writ of  
summons.

Between *A. B.*, Plaintiff,  
and  
*C. D.* and *E. F.*, Defendants.

VICTORIA, by the grace of God, &c.

To *C. D.* of in the county of and *E. F.*, of

We command you, That within eight days after the service of this writ on you, inclusive of the day of such service, you do cause an appearance to be entered for you in an action at the suit of *A. B.*; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, ROUNDALL, Earl of SELBORNE, Lord High

**Appendix A.** Chancellor of Great Britain, the day of in the year of our Lord  
**Part I.** one thousand eight hundred and  
**No. 1.**

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within twelve calendar months from the date thereof, or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [or defendants] may appear hereto by entering an appearance [or appearances] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &c.

This writ was issued by the said plaintiff, who resides at , or, This writ was issued by E. F., of whose address for service is , solicitor for the said plaintiff, who resides at , or this writ was issued by G. H., of , whose address for service is , agent for , of , solicitor for the said plaintiff, who resides at [mention the city, town, or parish, and also the name of the street and number of the house of the plaintiff's residence, if any].

*Indorsement to be made on the writ after service thereof.*

This writ was served by me at on the defendant on the day of 18 .

Indorsed the day of , 18 .  
 (Signed)  
 (Address)

This form is prescribed by O. II., r. 3, *ante*, p. 130.

*Costs.*—As to the costs of more prolix or other forms than those prescribed, see *ibid.*, r. 2, *ante*, p. 129.

*Writ of summons generally.*—As to commencing an action by writ of summons, see O. II., r. 1, *ante*, p. 129. See also O. III., r. 6, *ante*, p. 132, as to specially indorsed writs. As to Admiralty actions, see O. II., r. 7, *ante*, p. 131, and *post*, p. 526, No. 11.

*Reference to record.*—As to the date of the year, letter, and number, see O. V., r. 13, *ante*, p. 140.

*Choice of Division: name of Judge.*—As to the choice of a division, see s. 11 of the S. C. Jud. Act, 1875, *ante*, p. 72. As to marking the name of a particular Judge in actions assigned to the Chancery Division, see ss. 33 and 42, of S. C. Jud. Act, 1873, *ante*, pp. 33, 38, as modified by O. V., r. 9; and as to marking the name of the District Registry, when action commenced there, see O. V., r. 13, *ante*, p. 140. As to marking the name of a Judge where action is commenced in the District Registries of Liverpool or Manchester, see O. V., r. 9, *ante*, p. 140.

*Notice to officer.*—As to notice to the proper officer of the choice of a Division, see s. 11 of S. C. Jud. Act, 1875, *ante*, p. 72, and O. V., r. 14, *ante*, p. 140.

*Title of administration actions.*—As regards the title of administration actions in the Chancery Division, the following notice was issued in February, 1876, by the Record and Writ Clerks:—"Considerable confusion having arisen in actions for administration of an estate from the practice of adding after the issue of the writ a title, 'In the matter of the estate,' &c., solicitors are requested, in all actions for administration, to intitule the writ in the following form:—'In the matter of the estate, &c.—Between C. D., plaintiff, and E. F., defendant.' It will thus be possible to index these actions in the cause-book under the name of the estate to be administered."

*Description of parties.*—As to the description of parties, when suing or sued in a representative capacity, see O. III., rr. 4, 5, *ante*, p. 132.



*Parties to actions.*—As to the parties to actions, see O. XVI., *ante*, pp. 172 *et seq.*, and notes thereto. As to actions by or against partners or firms, see *ibid.*, rr. 14, 15, *ante*, pp. 178, 179.

*Date and teste of writ.*—As to the date and teste of the writ, see O. II., r. 8, *ante*, p. 131.

*Place of appearance.*—As to the place of appearing, see O. V., rr. 3, 4, *ante*, p. 137; O. XIII., *ante*, pp. 157 *et seq.*, and notes thereto.

*Indorsement of claim of plaintiff.*—As to the indorsements of the plaintiff's claim, see O. II., r. 1, *ante*, p. 129; O. III., *ante*, pp. 131 *et seq.*, and notes thereto.

*Indorsement of address, &c.*—As to the indorsement of the address of plaintiff and his solicitor, see O. IV., *ante*, p. 134; and as to the disclosure by solicitors and plaintiffs, see O. VII., *ante*, p. 143.

*Preparation of writ.*—As to the preparation and issuing of the writ, see O. V., *ante*, pp. 136 *et seq.*, and notes thereto.

*Service.*—As to service generally, see O. IX., *ante*, p. 145; and as to substituted service, O. IX., r. 2, and O. X., *ante*, pp. 145, 151.

*Indorsement of service.*—As to the indorsement of the date of service, see O. IX., r. 15, *ante*, p. 150.

*Foreign service.*—As to service abroad, see O. XI., *ante*, pp. 151 *et seq.*; Forms 5 to 10, *infra*, and notes thereto.

*Concurrent writs.*—As to concurrent writs, see O. VI., *ante*, p. 142.

*Renewal of writ.*—As to the renewal of writs, see O. VIII., *ante*, p. 144; and Form 18, *infra*.

**Appendix A.**  
**Part I.**  
**Nos. 1, 2.**

**No. 2.**

18 . [Here put the letter and number.]

Specially indorsed writ,  
Order III.,  
rule 6.

In the High Court of Justice.  
Division.

Between , Plaintiff,  
and  
Defendant.

VICTORIA, by the grace of God, &c.  
To of , in the county of .

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence. Witness, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, the day of , in the year of our Lord one thousand eight hundred and .

N.B.—This writ is to be served within twelve calendar months from the date thereof; or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim.

The plaintiff's claim is .

Particulars.

Place of trial

(Signed)

And the sum of £ , [or such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

**Appendix A.**  
**Part I.**  
**Nos. 2—4.**

This writ was issued by the said plaintiff, who resides at \_\_\_\_\_, [or] this writ was issued by *E. F.*, of \_\_\_\_\_ whose address for service is \_\_\_\_\_, solicitor for the said plaintiff, who resides at \_\_\_\_\_ [or] this writ was issued by *G. H.*, of \_\_\_\_\_, whose address for service is \_\_\_\_\_ agent for \_\_\_\_\_, of \_\_\_\_\_ solicitor for the said plaintiff, who resides at \_\_\_\_\_.

This writ was served by me at \_\_\_\_\_, on the defendant \_\_\_\_\_ on \_\_\_\_\_ the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

Indorsed the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(Signed)

(Address)

[NOTE.—The word “delivered” and the date of delivery need not be inserted at the end of this statement: *Veale v. Automatic Boiler Feeder Co.*, 18 Q. B. D. 631.]

**No. 3.**

18 \_\_\_\_ [Here put the letter and number.]

Writ for issue  
 from district  
 registry.

In the High Court of Justice.  
 Division.

(Manchester) DISTRICT REGISTRY.

Between \_\_\_\_\_, Plaintiff,  
 and \_\_\_\_\_  
 Defendant.

VICTORIA, by the grace of God, &c.

To \_\_\_\_\_ of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_.

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of \_\_\_\_\_. And take notice, that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence. Witness, Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord one thousand eight hundred and \_\_\_\_\_.

N.B.—This writ is to be served within twelve calendar months from the date thereof; or, if renewed, within six calendar months from the date of the last renewal, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.  
 [Insert address of office.]

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar, or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is \_\_\_\_\_.

This writ, &c.

N.B.—The address for service must be within the district.

This writ was served, &c.

**No. 4.**

18 \_\_\_\_ [Here put the letter and number.]

Specially  
 indorsed writ  
 for issue from  
 district re-  
 gistry.

In the High Court of Justice.  
 Division.

(Manchester) DISTRICT REGISTRY.

Between \_\_\_\_\_, Plaintiff,  
 and \_\_\_\_\_  
 Defendant.

VICTORIA, by the grace of God, &c.

To \_\_\_\_\_, of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_.

We command you, that within eight days after the service of this writ on you, inclusive of the day of such service, you cause an appearance to be entered

for you in an action at the suit of \_\_\_\_\_; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

**Appendix A.**  
**Part I.**  
**Nos. 4, 5.**

N.B.—This writ is to be served within twelve calendar months from the date thereof; or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district. [*Insert address of office.*]

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar, or at the Central Office, Royal Courts of Justice, London.

Statement of Claim.

The plaintiff's claim is \_\_\_\_\_.

Particulars.

Place of trial \_\_\_\_\_.

(Signed)

And the sum of £ \_\_\_\_\_ [or such sum as may be allowed on taxation], for costs. If the amount claimed is paid to the plaintiff, or his solicitor or agent within four days from the service hereof, further proceedings will be stayed.

This writ, &c.

N.B.—*The address for service must be within the district.*

This writ was served, &c.

**No. 5.**

18 . [*Here put the letter and number.*]

In the High Court of Justice.  
Division.

Between *A. B.*, Plaintiff,  
and  
*C. D.* and *E. F.*, Defendants.

Writ for service out of the jurisdiction, or where notice in lieu of service is to be given out of the jurisdiction.

VICTORIA, by the grace of God, &c.

To *C. D.*, of \_\_\_\_\_.

We command you, *C. D.*, that within [*here insert the number of days directed by the Court or Judge ordering the service or notice*] after the service of this writ [or, notice of this writ, as the case may be] on you, inclusive of the day of such service, you do cause an appearance to be entered for you in the \_\_\_\_\_ Division of Our High Court of Justice in an action at the suit of *A. B.*; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

*Memoranda and Indorsement as in Form No. 1.*

*Indorsement to be made on the writ before the issue thereof.*

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

[NOTE.—For table of time to be limited for entering appearance after service out of the jurisdiction of writ or notice of writ, see *post*, p. 661.]



**Appendix A.**  
**Part I.**  
**Nos. 6, 7.**

Specially in-  
 dorsed writ  
 for service out  
 of the juris-  
 diction.

**No. 6.**

[Heading as in Form 1.]

VICTORIA, by the grace of God, &c.

To \_\_\_\_\_, of \_\_\_\_\_, in the \_\_\_\_\_ of \_\_\_\_\_

We command you, that within [insert number of days directed by Court or Judge] days after service [if notice of the writ is to be served, insert here "of notice"] of this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of \_\_\_\_\_; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof; or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

Appearance is to be entered at the Central Office, Royal Courts of Justice, London.

Statement of Claim.

The plaintiff's claim is \_\_\_\_\_

Particulars.

Place of trial \_\_\_\_\_

(Signed)

And £ \_\_\_\_\_ [or such sum as may be allowed on taxation] for costs. If the amount claimed is paid to the plaintiff or his solicitor or agent within [insert number of days limited for appearance] days from service [if notice to be served, insert here "of notice"] hereof, further proceedings will be stayed.

This writ was issued, &c.

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. When the defendant to be served is not a British subject, and is not in British dominions, notice of the writ, and not the writ itself, is to be served upon him.

[NOTE.—A writ issued against a foreign company having no office in the United Kingdom must be in Form No. 5 or No. 6. A writ issued in Form No. 2 was set aside: *Sedgwick v. Yedras Mining Co.*, 35 W. R. 780. A writ issued in Form No. 1, containing no address of defendant, was set aside: *The W. A. Scholten*, 13 P. D. 8.]

**No. 7.**

[Heading as in Form 3.]

VICTORIA, by the grace of God, &c.

To \_\_\_\_\_, of \_\_\_\_\_

We command you, that within [insert number of days directed by Court or Judge] days after service of [if notice of writ is to be served, insert here "notice of"] this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of \_\_\_\_\_; and take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof; or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district. [Insert address of office.]

Writ from dis-  
 trict registry  
 for service out  
 of the juris-  
 diction.

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar, or at the Central Office, Royal Courts of Justice, London.

**Appendix A.**  
**Part I.**  
**Nos. 7, 8.**

The plaintiff's claim is

This writ was issued by, &c.

N.B.—*The address for service must be within the district.*

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant, or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the defendant to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

### No. 8.

[Heading as in Form 3.]

Specially indorsed writ from district registry for service out of the jurisdiction.

VICTORIA, by the grace of God, &c.

To , of , in the of

We command you, that within [insert number of days directed by Court or Judge] days after service of [if notice of writ is to be served, insert here "notice of"] this writ on you, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of ; and take notice, that in default of your so doing, the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof; or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district. [Insert address of office.]

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar, or at the Central Office, Royal Courts of Justice, London.

#### Statement of Claim.

The plaintiff's claim is

Particulars.

Place of trial

(Signed)

And £ [or such sum as may be allowed on taxation], for costs. If the amount claimed be paid to the plaintiff or his solicitor or agent within [insert number of days limited for appearance] days from service [if notice of writ is to be served, insert here "of notice"] hereof, further proceedings will be stayed.

This writ was issued by, &c.

N.B.—*The address for service must be within the district.*

This writ [or notice of this writ] was served, &c.

N.B.—This writ is to be used where the defendant or all the defendants, or one or more defendant or defendants, is or are out of the jurisdiction. Where the person to be served is not a British subject, and is not in British dominions, notice of the writ and not the writ itself is to be served upon him.

**Appendix A.**  
**Part I.**  
**Nos. 9—11.**

Notice of writ  
in lieu of ser-  
vice to be  
given out of  
the jurisdic-  
tion.

**No. 9.**

[Heading as in Form 1.]

To *G. H.*, of

Take notice that *A. B.*, of , has commenced an action against you, *G. H.*, in the Division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the day of , A.D. 18 ; which writ is indorsed as follows [*copy in full the indorsements*], and you are required within days after the receipt of this notice, inclusive of the day of such receipt, to defend the said action, by causing an appearance to be entered for you in the said Court to the said action, and in default of your so doing, the said *A. B.* may proceed therein, and judgment may be given in your absence.

You may appear to the said writ by entering an appearance personally or by your solicitor at the Central Office, Royal Courts of Justice, London.

(Signed) *A. B.*, of §c.

*X. Y.*, of or §c.

In the High Court of Justice.  
Division

Solicitor for *A. B.*

**No. 10.**

[Heading as in Form 3.]

Notice of writ  
in lieu of ser-  
vice to be  
given out of  
the jurisdic-  
tion.

[For issue from  
a district  
registry.]

To , of

Take notice, that , of , has commenced an action against you , in the Division of Her Majesty's High Court of Justice in England, by writ of that Court, dated the day of , 18 , which writ is indorsed as follows :— ; and you are hereby required within days after the receipt of this notice, inclusive of the day of such receipt, to defend this action by causing an appearance to be entered for you thereto, and in default of your so doing the said may proceed therein, and judgment may be given in your absence.

If you reside or carry on business within the above-named district, appearance is to be entered at the office of the registrar for that district [*insert address of office*]. If you do not either reside or carry on business within that district, appearance is to be entered either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

(Signed)

This notice was served by, §c.

N.B.—This notice is to be used where the person to be served is not a British subject, and is not in British dominions.

**No. 11.**

18 .

[Here put the letter and number.]

Writ of sum-  
mons in Ad-  
miralty action  
in rem.

In the High Court of Justice.

Probate Divorce and Admiralty Division.

Between *A. B.*, Plaintiff,  
and

The owners of the

VICTORIA, by the grace of God, §c.

To the owners and parties interested in the ship or vessel of the port  
of [*or cargo, §c. as the case may be*].

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you do cause an appearance to be entered for you in the Probate, Divorce, and Admiralty Division of our High Court of



Justice in an action at the suit of *A. B.*; and take notice that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

Appendix A.  
Part I.  
Nos. 11, 12.

*Memorandum to be subscribed on the writ.*

N.B.—This writ is to be served within twelve calendar months from the date thereof; or, if renewed within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

The defendant [*or* defendants] may appear hereto by entering an appearance [*or* appearances] either personally or by solicitor at the Central Office, Royal Courts of Justice, London.

*Indorsements to be made on the writ before issue thereof.*

The plaintiff's claim is for, &c.

This writ was issued by, &c.

*Indorsement to be made on the writ after service thereof.*

This writ was served by *X. Y.* [*here state the mode in which the service was effected, whether on the ship, cargo, or freight, according to Order IX., Rules 11, 12, 13, and 14, as the case may be*] on , the day of , 18 .

Signed, *X. Y.*

[NOTE.—See O. II., r. 7, *ante*, p. 131.]

No. 12.

18 . [*Here put letter and number.*]

In the High Court of Justice.  
Division.

(*Manchester*) DISTRICT REGISTRY.

Between , Plaintiff,

and

The owners of the  
Defendants.

Writ in Admiralty actions for issue from district registry.

VICTORIA, by the Grace of God, &c., to the owners and parties interested in the ship or vessel , of the port of , and

We command you, that within eight days after the service of this writ, inclusive of the day of such service, you cause an appearance to be entered for you in an action at the suit of . And take notice, that in default of your so doing the plaintiff may proceed therein, and judgment may be given in your absence. Witness, &c.

N.B.—This writ is to be served within twelve calendar months from the date thereof; or, if renewed, within six calendar months from the date of the last renewal, including the day of such date, and not afterwards.

A defendant who resides or carries on business within the above-named district must enter appearance at the office of the registrar of that district.  
[*Insert address of office.*]

A defendant who neither resides nor carries on business within the said district may enter appearance either at the office of the said registrar or at the Central Office, Royal Courts of Justice, London.

The plaintiff's claim is for

This was issued by, &c.

N.B.—*The address for service must be within the district.*

This writ was served by me [*state mode of service*], on the day of , 18 .

Indorsed the day of , 18

Signed  
Address

Appendix A.  
Part I.  
Nos. 13—16.

Affidavit to  
lead warrant  
in a cause of  
restraint.

No. 13.

[Heading as in Form 11.]

I, *A. B.*, make oath and say as follows:—

1. I am the lawful owner of [*state number*] sixty-fourth shares of the        or  
vessel        belonging to the port of       , and the value of my said shares  
amounts to the sum of        pounds or thereabouts.

2. The said vessel is now lying at       , and is in the possession or under  
the control of       , the owner of [*state number*] sixty-fourth shares thereof,  
and is about to be despatched by him on a voyage to        against my  
consent.

3. I am desirous that the said vessel be restrained from proceeding to sea,  
until security be given to the extent of my interest therein for her safe return  
to the said port of [*the port to which the vessel belongs*], and the aid and process  
of the High Court of Justice are necessary in that behalf.

Sworn, &c.

No. 14.

[Heading as in Form 11.]

I, *A. B.*, make oath and say as follows:—

1. I am the lawful owner of [*state number*] sixty-fourth shares of the  
or vessel       , belonging to the port of       .

2. The said vessel is now lying at       , and is in the possession or under  
the control of [*state name, address, and description of the person retaining possession,*  
*and state whether he is the master or part owner, and if owner, of how many shares*];  
and the said        refuses to deliver up the same to me; [and the certificate  
of registry of the said vessel is also unlawfully withheld from me by the  
said       , who is in possession thereof].

3. The aid and process of the High Court of Justice are necessary to enable  
me to obtain possession of the said vessel [and of the certificate of registry].

Sworn, &c.,

Before me,

*C. D.*, &c.

No. 15.

[Heading as in Form 11.]

I, *A. B.*, solicitor for the plaintiff, pray a warrant to arrest [*state name and*  
*nature of property*].

Dated the        day of       , 18   .

[To be signed by the solicitor, or by his clerk for him.]

No. 16.

[Heading as in Form 11.]

I, *A. B.*, solicitor for the [*state whether plaintiff or defendant*] pray that the  
[*state nature of instrument*] left herewith be duly executed.

Dated the        day of       , 18   .

[To be signed by the solicitor, or by his clerk for him.]

Affidavit to  
lead warrant  
in a cause of  
possession.

Præcipe for  
warrant.

Præcipe for  
service by the  
marshal of any  
instrument in  
rem other than  
a warrant.

No. 17.

[Heading as in Form 11.]

Victoria, by the Grace of God, &c.

To the Marshal of the Probate Divorce and Admiralty Division of Our High Court of Justice, and to all and singular his substitutes [or To the Collector or Collectors of Customs at the Port of ]. We hereby command you to arrest the ship or vessel of the port of [and the cargo and freight, &c., as the case may be] and to keep the same under safe arrest, until you shall receive further orders from Us.

Witness, &c.

Appendix A.  
Part I.  
Nos. 17—19.

Warrant of  
arrest in Ad-  
miralty action  
in rem.

No. 18.

[Heading as in Form 1.]

Seal renewed writ of summons in this action indorsed as follows:—

[Copy original writ and the indorsements.]

Form of  
memorandum  
for renewed  
writ.

No. 19.

[Heading as in Form 1.]

I, A. B., solicitor for the above-named , hereby certify that the writ [summons or petition] annexed hereto relates to the administration of the same trust [or, the winding up of the same Company,] as or is so connected with, the cause or matter entitled [insert title] and assigned to the Hon. Mr. Justice , as to be conveniently dealt with by the same Judge.

Certificate of  
solicitor as to  
assignment of  
cause or  
matter.

PART II.

FORMS OF ENTRY OF APPEARANCE AND OF BAIL AND  
RELEASES IN ADMIRALTY ACTIONS.

Appendix A.  
Part II.  
No. 1.

No. 1.

In the High Court of Justice.  
Division.

18 . No.  
Between , Plaintiff,  
and  
, Defendant.

Memorandum  
of appearance  
in general.

Enter an appearance for in this action.

Dated the day of , 18 .

(Signed)

of [If this address be beyond three miles from the  
Royal Courts of Justice, an address for service  
within three miles thereof must be given.]

Agent for  
of



**Appendix A.**  
**Part II.**  
**Nos. 2—4.**

**No. 2.**

[Heading as in Form 1.]

Notice of  
 entry of ap-  
 pearance.

Take notice, that have this day entered an appearance at the Central Office,  
 Royal Courts of Justice [or at the office of the registrar of the  
 District Registry] for the defendant to the writ of summons  
 in this action.

[If statement of claim is required, add] The said defendant require delivery  
 of a statement of claim.

Dated the day of , 18 .

(Signed)

of

Agent for

Solicitor for the defendant .

To

**No. 3.**

[Heading as in Form 1.]

Notice limit-  
 ing defence.

Take notice that the [above-named] defendant [A.B.] limits his defence to part  
 only of the property mentioned in the writ of summons, namely, to the close  
 called "The Big Field."

Dated the day of , 18 .

(Signed)

of

Agent for

of

Solicitors for the above-named defendant.

To Messrs.

The Plaintiff's Solicitors.

**No. 4.**

[Heading as in Form 1.]

Entry of ap-  
 pearance  
 limiting  
 defence.

Enter an appearance for the defendant in this action. The said  
 defendant limits his defence to part only of the property mentioned in the writ  
 of summons, namely, to the close called "The Big Field."

The address of is

Dated the day of , 18 .

(Signed)

of [If this address be beyond three miles from the  
 Royal Courts of Justice, an address for service  
 within three miles thereof must be given.]

Agent for

of

No. 5.

[Heading as in Form 1.]

Appendix A.  
Part II.  
Nos. 5—8.

Enter an appearance for the day of , 18 , to the notice issued in this action on the day of , 18 , by the defendant under the Rules of the Supreme Court, 1883, Order XVI., Rule 49.

Dated the day of , 18 .

(Signed)

of [If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.]

Agent for  
of

Entry of  
appearance,  
Order XVI.  
rule 49.

No. 6.

[Heading as in Form 1.]

Entry of  
appearance,  
Order XVII.  
rule 5.

Enter an appearance for dated the day of , who has been served with an order to carry on and prosecute the proceedings in this action.

Dated the day of , 18 .

(Signed)

of [If this address be beyond three miles from the Royal Courts of Justice, an address for service within three miles thereof must be given.]

Agent for  
of

No. 7.

[Heading as in Form 1.]

Entry of  
appearance  
to counter-  
claim.

Enter an appearance for defendant in this action. to the counter-claim of the above-named defendant

Dated the day of , 18 .

(Signed)

of [If this address be beyond three miles from the Royal Courts of Justice an address for service within three miles thereof must be given.]

Agent for  
of

No. 8.

[Heading as in Form 1.]

Affidavit for  
entry of ap-  
pearance as  
guardian.

I,  
follows:—

, of , make oath and say as

A.B., of , is a fit and proper person to act as guardian *ad litem* of the above-named infant defendant, and has no interest in the matters in question in this action [matter] adverse to that of the said infant, and the consent of the said A.B. to act as such guardian is hereto annexed.

Sworn, &c.

[To this Affidavit shall be annexed the document signed by such guardian in testimony of his consent to act.]

## FORMS—ENTRY OF APPEARANCE.

Appendix A.  
Part II.  
Nos. 9—11.

## No. 9.

18 . [Here put the letter and number.]

Præcipe for  
notice of bail.In the High Court of Justice.  
Probate Divorce and Admiralty Division.Between *A.B.*, Plaintiff,  
and  
the Owners of the

I, *A.B.*, solicitor for the [state whether plaintiff or defendant], tender the under-mentioned persons as bail on behalf of [state the name, address, and description of the party for whom bail is to be given], in the sum of £ to answer judgment in this action (if for costs add, so far as regards costs).

Names, addresses, and descriptions of

Sureties.

Referees.

1. \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 .

[To be signed by the solicitor or by his clerk for him.]

[The names of bankers should if possible be given as referees.]

## No. 10.

Notice of bail.

[Heading as in Form 9.]

Take notice that *A.B.*, solicitor for the [state whether plaintiff or defendant], tenders the under-mentioned persons as bail on behalf of [state name, address, and description of the party for whom bail is to be given], in the sum of £ to answer judgment in this action (if for costs add, so far as regards costs).

Names, addresses, and descriptions of

Sureties.

Referees.

1. \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_

\_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 .

G.H.,  
Marshal.

## No. 11.

[Heading as in Form 9.]

Marshal's re-  
port as to the  
sufficiency of  
proposed bail.

I hereby report that I have made diligent inquiry and certified myself that [state names, addresses, and descriptions of the two sureties], the proposed bail on behalf of [state name, address, and description of the party for whom bail is to be given] to answer judgment in this action (if for costs add, so far as regards costs) are respectively sufficient sureties for the sum of [state the sum in letters] pounds

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 .

G.H.,  
Marshal.



No. 12.

[Heading as in Form 9.]

Appendix A.  
Part II.  
Nos. 12—15.

I, *A.B.*, solicitor for the [*state whether plaintiff or defendant*], pray a bail bond for a signature of the sureties named in the annexed notice of bail and report of the Marshal. Præcipe for bail bond.

Dated the            day of            , 18   .  
[To be signed by the solicitor, or by his clerk for him.]

No. 13.

[Heading as in Form 9.]

Bail bond.

Whereas an action of            has been commenced in the High Court of Justice on behalf of            against            [and against            intervening]. Now, therefore, we            and            hereby jointly and severally submit ourselves to the jurisdiction of the said Court, and consent that, if he the said            shall not pay what may be adjudged against him in the said action with costs, execution may issue forth against us, our heirs, executors, and administrators, goods and chattels, for a sum not exceeding £

(Signatures of sureties.)

This bail bond was signed by the  
said            and             
the sureties, the            day }  
of            , 18   .

Before me,

[To be signed before the Registrar, or one of the clerks in the Registry, or before a Commissioner for Oaths.]

No. 14.

[Heading as in Form 9.]

Affidavit of  
justification.

I, [*state name, address, and description*], one of the proposed sureties for [*state name, address, and description of the person for whom bail is to be given*], make oath and say, that I am worth more than the sum of [*state the sum in letters in which bail is to be given*] pounds after the payment of all my debts.

Sworn, &c.

No. 15.

[Heading as in Form 9.]

Præcipe for  
release.

I, *A.B.*, solicitor for the [*state whether plaintiff or defendant*] in an action [*state nature of action*], commenced on behalf of            against the [*state name and nature of property*], now under arrest by virtue of a warrant issued from the Registry of this Division, pray a release of the said            [bail having been given, or, the action having been withdrawn by me before an appearance was entered therein, &c., as the case may be], and there being no caveat against the release thereof outstanding.

Dated the            day of            , 18   .  
[To be signed by the solicitor, or by his clerk for him.]

## Appendix A.

## Part II.

## Nos. 16—19. In the High Court of Justice.

## Probate Divorce and Admiralty Division.

Release.

Victoria, by the Grace of God, &c. To the Marshal of the Probate Divorce and Admiralty Division of our High Court of Justice, and to all and singular his substitutes, greeting. Whereas in an action of \_\_\_\_\_ commenced in our said High Court on behalf of \_\_\_\_\_ against \_\_\_\_\_, we did command you to arrest the said \_\_\_\_\_, and to keep the same under safe arrest until you should receive further orders from us. Now we do hereby command you to release the said \_\_\_\_\_ from the arrest effected by virtue of our warrant in the said action, upon payment being made to you of all costs, charges, and expenses attending the care and custody of the property whilst under arrest in that action.

Witness, &amp;c.

(Seal.)

Release

Taken out by

## No. 17.

[Heading as in Form 9.]

Præcipe for  
caveat  
(release).

I, *A. B.*, solicitor for the plaintiff in an action [*state nature of cause*] commenced on behalf of [*state name, address, and description of plaintiff*], against [*state name and nature of property*], pray a caveat against the release of the said [*state name and nature of property*].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

[To be signed by the solicitor, or by his clerk for him.]

## No. 18.

[Heading as in Form 9.]

Præcipe  
caveat  
(warrant).

I, [*state name, address, and description*] hereby undertake to enter an appearance in any action that may be commenced in the High Court of Justice against [*state name and nature of the property*], and within three days after I shall have been served with a notice of the commencement of any such action to give bail therein in a sum not exceeding [*state amount for which the undertaking is given*] pounds, or to pay such sum into the Admiralty Registry. And I consent that all instruments and other documents in such action may be left for me at \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

[To be signed by the party, or by his solicitor.]

## No. 19.

[Heading as in Form 9.]

Præcipe to  
withdraw  
caveat.

I, *A. B.*, solicitor for the [*state whether plaintiff or defendant*], pray that the caveat against [*state tenor of caveat*], entered by me on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, on behalf of [*state name*] may be withdrawn.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

[To be signed by the person by whom the præcipe for the entry of the caveat was signed.]

PART III.

Appendix A.  
Part III.  
s. 1.

GENERAL INDORSEMENTS ON WRITS OF SUMMONS.

SECTION I.

IN MATTERS ASSIGNED BY THE 34TH SECTION OF THE ACT TO THE CHANCERY  
DIVISION.

1.

The plaintiff's claim is as a creditor of *X. Y.*, of \_\_\_\_\_, deceased, to have the [real and] personal estate of the said *X. Y.* administered. The defendant *C. D.* is sued as the administrator of the said *X. Y.* [and the defendants *E. F.* and *G. H.* as his co-heirs-at-law].

Creditor to  
administer  
estate.

2.

The plaintiff's claim is as a legatee under the will dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, of *X. Y.*, deceased, to have the [real and] personal estate of the said *X. Y.* administered. The defendant *C. D.* is sued as the executor of the said *X. Y.* [and the defendants *E. F.* and *G. H.* as his devisees].

Legatee to  
administer  
estate.

3.

The plaintiff's claim is to have an account taken of the partnership dealings between the plaintiff and defendant [under articles of partnership dated the \_\_\_\_\_ day of \_\_\_\_\_], and to have the affairs of the partnership wound up.

Partnership.

4.

The plaintiff's claim is to have an account taken of what is due to him for principal, interest and costs on a mortgage dated the \_\_\_\_\_ day of \_\_\_\_\_ made between \_\_\_\_\_ [or by deposit of title-deeds], and that the mortgage may be enforced by foreclosure or sale.

By mortgagee.

5.

The plaintiff's claim is to have an account taken of what, if anything, is due on a mortgage dated \_\_\_\_\_ and made between [parties], and to redeem the property comprised therein.

By mortgagor.

6.

The plaintiff's claim is that the sum of \_\_\_\_\_ £., which by an indenture of settlement dated \_\_\_\_\_, was provided for the portions of the younger children of \_\_\_\_\_, may be raised.

Raising  
portions.

7.

The plaintiff's claim is to have the trusts of an indenture dated \_\_\_\_\_ and made between \_\_\_\_\_, carried into execution.

Execution of  
trusts.

8.

The plaintiff's claim is to have a deed dated \_\_\_\_\_ and made between [parties] set aside or rectified.

Cancellation  
or rectifica-  
tion.

9.

The plaintiff's claim is for specific performance of an agreement dated the \_\_\_\_\_ day of \_\_\_\_\_, for the sale by the plaintiff to the defendant of certain [freehold] hereditaments at \_\_\_\_\_.

Specific per-  
formance.



Appendix A.  
Part III.  
s. 2.

## SECTION II.

## MONEY CLAIMS WHERE NO SPECIAL INDORSEMENT UNDER ORDER III., RULE 6.

Goods sold.	The plaintiff's claim is	l. for the price of goods sold.
	[This Form shall suffice whether the claim be in respect of goods sold and delivered, or of goods bargained and sold.]	
Money lent.	The plaintiff's claim is	l. for money lent [and interest].
Several demands.	The plaintiff's claim is sold, and	l. whereof l. is for the price of goods sold, and l. for money lent, and l. for interest.
Rent.	The plaintiff's claim is	l. for arrears of rent.
Salary, &c.	The plaintiff's claim is	l. for arrears of salary as a clerk [or as the case may be].
Interest.	The plaintiff's claim is	l. for interest upon money lent.
General average.	The plaintiff's claim is	l. for a general average contribution.
Freight, &c.	The plaintiff's claim is	l. for freight and demurrage.
Lighterage.	The plaintiff's claim is	l. for lighterage.
Tolls.	The plaintiff's claim is	l. for market tolls and stallage.
Penalties.	The plaintiff's claim is	l. for penalties under the Statute [ . . . ].
Banker's balance.	The plaintiff's claim is banker.	l. for money deposited with the defendant as a banker.
Fees, &c. as solicitors.	The plaintiff's claim is expended] as a solicitor.	l. for fees for work done [and l. money
Commission.	The plaintiff's claim is	l. for commission earned as [state character, as
	auctioneer, cotton broker, &c.].	
Medical attendance, &c.	The plaintiff's claim is	l. for medical attendances.
Return of premium.	The plaintiff's claim is of insurance.	l. for a return of premiums paid upon policies
Warehouse rent.	The plaintiff's claim is	l. for the warehousing of goods.
Carriage of goods.	The plaintiff's claim is	l. for the carriage of goods by railway.
Use and occupation of houses.	The plaintiff's claim is	l. for the use and occupation of a house.
Hire of goods.	The plaintiff's claim is	l. for the hire of [furniture].
Work done.	The plaintiff's claim is	l. for work done as a surveyor.
Board and lodging.	The plaintiff's claim is	l. for board and lodging.
Schooling.	The plaintiff's claim is	l. for the board, lodging, and tuition of X. Y.
Money received.	The plaintiff's claim is colour of the office of	l. for money received by the defendant as solicitor [or factor, or collector, or, &c.] of the plaintiff.
Fees of office.	The plaintiff's claim is	l. for fees received by the defendant under
Money overpaid.	The plaintiff's claim is	l. for a return of money overcharged for the
	defendant as	l. for a return of fees overcharged by the
Return of money by stakeholder.	The plaintiff's claim is	l. for a return of money deposited with the
Money won from stakeholder.	The plaintiff's claim is	l. for a return of money deposited with the
Money entrusted to agent.	The plaintiff's claim is	l. for money entrusted to the defendant as stakeholder, and payable to plaintiff.
	defendant as agent of the plaintiff.	l. for a return of money entrusted to the de-

The plaintiff's claim is plaintiff by fraud.	1. for a return of money obtained from the	Appendix A. Part III. ss. 2, 3.
The plaintiff's claim is by mistake.	1. for a return of money paid to the defendant	Money obtained by fraud.
The plaintiff's claim is for [work to be done, left undone; or, a bill to be taken up; not taken up, or, &c].	1. for a return of money paid to the defendant	Money paid by mistake.
The plaintiff's claim is shares to be allotted.	1. for a return of money paid as a deposit upon	Money paid for consideration which has failed.
The plaintiff's claim is surety.	1. for money paid for the defendant as his	Money paid by surety for defendant.
The plaintiff's claim is defendant.	1. for money paid for rent due by the de-	Rent paid.
The plaintiff's claim is dorsed] for the defendant's accommodation.	1. upon a bill of exchange accepted [or in-	Money paid on accommodation bill.
The plaintiff's claim is by the plaintiff as surety.	1. for a contribution in respect of money paid	Contribution by surety.
The plaintiff's claim is of the plaintiff and the defendant, paid by the plaintiff.	1. for a contribution in respect of a joint debt	By co-debtor.
The plaintiff's claim is against which the defendant was bound to indemnify the plaintiff.	1. for money paid for calls upon shares,	Money paid for calls.
The plaintiff's claim is	1. for money payable under an award.	Money payable under award.
The plaintiff's claim is X. Y., deceased.	1. upon a policy of insurance upon the life of	Life policy.
The plaintiff's claim is and interest.	1. upon a bond to secure a payment of £1,000,	Money bond.
The plaintiff's claim is of Russia.	1. upon a judgment of the Court, in the Empire	Foreign judgment.
The plaintiff's claim is	1. upon a cheque drawn by the defendant.	Bills of exchange, &c.
The plaintiff's claim is or indorsed] by the defendant.	1. upon a bill of exchange accepted [or drawn,	
The plaintiff's claim is by the defendant.	1. upon a promissory note made [or indorsed]	
The plaintiff's claim is against the defendant C. D. as drawer [or indorser] of a bill of exchange.	1. against the defendant A. B. as acceptor, and	
The plaintiff's claim is of goods sold.	1. against the defendant as surety for the price	Surety.
The plaintiff's claim is against the defendant C. D. as surety for the price of goods sold [or arrears of rent, or for money lent, or for money received by the defendant A. B., as traveller for the plaintiffs, or, &c].	1. against the defendant A. B. as principal, and	
The plaintiff's claim is for the price of goods sold [or as losses under a policy].	1. against the defendant as a <i>del credere</i> agent	<i>Del credere</i> agent.
The plaintiff's claim is	1. for calls upon shares.	Calls.
The plaintiff's claim is be] left by the defendant as outgoing tenant of a farm.	1. for crops, tillage, manure [or as the case may	Waygoing crops, &c.

### SECTION III.

#### INDORSEMENT FOR COSTS.

Add to the above Forms :—

And 1. for costs; and if the amount claimed be paid to the plaintiff or his solicitor within four days [or if the writ is to be served out of the jurisdiction, or notice in lieu of service allowed, insert the time for appearances limited by the rules] from the service hereof, further proceedings will be stayed.

**Appendix A.**  
**Part III.**  
**s. 4.**

## SECTION IV.

## DAMAGES AND OTHER CLAIMS.

- Account.** The plaintiff's claim that an account be taken of [*say what*].
- Agent, &c.** The plaintiff's claim is for damages for breach of a contract to employ the plaintiff as traveller.  
 The plaintiff's claim is for damages for wrongful dismissal from the defendant's employment as traveller [and *l.* for arrears of wages].  
 The plaintiff's claim is for damages for the defendant's wrongfully quitting the plaintiff's employment as manager.  
 The plaintiff's claim is for damages for breach of duty as factor [*or, &c.*] of the plaintiff [and *l.* for money received as factor, &c.].
- Apprentices.** The plaintiff's claim is for damages for breach of the terms of a deed of apprenticeship of *X. Y.* to the defendant [*or plaintiff*].
- Arbitration.** The plaintiff's claim is for damages for non-compliance with the award of *X. Y.*
- Assault.** The plaintiff's claim is for damages for assault and false imprisonment, [and for malicious prosecution].
- By husband and wife.** The plaintiff's claim is for damages for assault and false imprisonment of the plaintiff *C. D.*
- Solicitor.** The plaintiff's claim is for damages for injury by the defendant's negligence as solicitor of the plaintiff.
- Bailment.** The plaintiff's claim is for damages for negligence in the custody of goods [and for wrongfully detaining the same].
- Pledge.** The plaintiff's claim is for damages for negligence in the keeping of goods pawned [and for wrongfully detaining the same].
- Hire.** The plaintiff's claim is for damages for negligence in the custody of furniture lent on hire [*or a carriage lent*], [and for wrongfully, &c.].
- Banker.** The plaintiff's claim is for damages for wrongfully neglecting [*or refusing*] to pay the plaintiff's cheque.
- Bill.** The plaintiff's claim is for damages for breach of a contract to accept the plaintiff's drafts.
- Bond.** The plaintiff's claim is upon a bond conditioned not to carry on the trade of a .
- Carrier.** The plaintiff's claim is for damages for refusing to carry the plaintiff's goods by railway.  
 The plaintiff's claim is for damages for refusing to carry the plaintiff by railway.  
 The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of coals by railway.  
 The plaintiff's claim is for damages for breach of duty in and about the carriage and delivery of machinery by sea.
- Charter-party.** The plaintiff's claim is for damages for breach of charter-party of ship [*Mary*].
- Claim for return of goods; damages.** The plaintiff's claim is for return of household furniture, *or, &c.*, or their value, and for damages for detaining the same.
- Damages for depriving of goods.** The plaintiff's claim is for wrongfully depriving plaintiff of goods, household furniture, &c.
- Defamation.** The plaintiff's claim is for damages for libel.
- Distress.** The plaintiff's claim is for damages for slander.
- Replevin.** The plaintiff's claim is in replevin for goods wrongfully distrained.



The plaintiff's claim is for damages for improperly distraining.	Appendix A. Part III. s. 4.
[ <i>This Form shall be sufficient whether the distress complained of be wrongful or excessive, or irregular, and whether the claim be for damages only, or for double value.</i> ]	
The plaintiff's claim is to recover possession of a house, No. in street [or of a farm called <i>Blackacre</i> ], situate in the parish of in the county of	Wrongful distress. Ejectment.
The plaintiff's claim is to establish his title to [ <i>here describe property</i> ], and to recover the rents thereof.	To establish title and recover rents.
[ <i>The two previous Forms may be combined.</i> ]	
The plaintiff's claim is for dower.	Dower.
The plaintiff's claim is for damages for infringement of the plaintiff's right of fishing.	Fishery.
The plaintiff's claim is for damages for fraudulent misrepresentation on the sale of a horse [ <i>or a business, or shares, or, &amp;c.</i> ].	Fraud.
The plaintiff's claim is for damages for fraudulent misrepresentation of the credit of <i>A. B.</i>	
The plaintiff's claim is for damages for breach of a contract of guarantee for <i>A. B.</i>	Guarantee.
The plaintiff's claim is for damages for breach of a contract to indemnify the plaintiff as the defendant's agent to distrain.	
The plaintiff's claim is for a loss under a policy upon the ship " <i>Royal Charter</i> ," and freight or cargo [ <i>or for return of premiums</i> ].	Insurance.
[ <i>This Form shall be sufficient whether the loss claimed be total or partial.</i> ]	
The plaintiff's claim is for a loss under a policy of fire insurance upon house and furniture.	Fire insurance.
The plaintiff's claim is for damages for breach of a contract to insure a house.	
The plaintiff's claim is for damages for breach of contract to keep a house in repair.	Landlord and tenant.
The plaintiff's claim is for damages for breaches of covenants contained in a lease of a farm.	
The plaintiff's claim is for damages for injury to the plaintiff from the defendant's negligence as a medical man.	Medical man.
The plaintiff's claim is for damages for injury by the defendant's dog.	Mischievous animal.
The plaintiff's claim is for damages for injury to the plaintiff by the negligent driving of the defendant or his servants.	Negligence.
The plaintiff's claim is for damages for injury to the plaintiff while a passenger on the defendants' railway by the negligence of the defendants' servants.	
The plaintiff's claim is for damages for injury to the plaintiff at the defendants' railway station, from the defective condition of the station.	
The plaintiff's claim is as executor of <i>A. B.</i> , deceased, for damages for the death of the said <i>A. B.</i> , from injuries received while a passenger on the defendants' railway, by the negligence of the defendants' servants.	Lord Campbell's Act.
The plaintiff's claim is for damages for breach of promise of marriage.	Promise of marriage.
The plaintiff's claim is in <i>quare impedit</i> for	<i>Quare impedit.</i>
The plaintiff's claim is for damages for the seduction of the plaintiff's daughter.	Seduction.
The plaintiff's claim is for damages for breach of contract to accept and pay for goods.	Sale of goods.
The plaintiff's claim is for damages for non-delivery [ <i>or short delivery, or defective quality, or other breach of contract of sale</i> ] of cotton [ <i>or, &amp;c.</i> ].	
The plaintiff's claim is for damages for breach of warranty of a horse.	

**Appendix A.**  
**Part III.**  
**s. 4.**

	The plaintiff's claim is for damages for breach of a contract to sell [ <i>or purchase</i> ] land.
Sale of land.	The plaintiff's claim is for damages for breach of a contract to let [ <i>or take</i> ] a house. The plaintiff's claim is for damages for breach of a contract to sell [ <i>or purchase</i> ] the lease, with goodwill, fixtures, and stock-in-trade of a public-house. The plaintiff's claim is for damages for breach of covenant for title [ <i>or for quiet enjoyment, or, &amp;c.</i> ] in a conveyance of land.
Trespass to land.	The plaintiff's claim is for damages for wrongfully entering the plaintiff's land and drawing water from his well [ <i>or cutting his grass, or pulling down his timber, or pulling down his fences, or removing his gate, or using his road or path, or crossing his field, or depositing sand there, or carrying away gravel thence, or carrying away stones from his river</i> ].
Support.	The plaintiff's claim is for damages for wrongfully taking away the support of plaintiff's land [ <i>or house, or mine</i> ].
Way.	The plaintiff's claim is for damages for wrongfully obstructing a way [ <i>public highway, or a private way</i> ].
Watercourse, &c.	The plaintiff's claim is for damages for wrongfully diverting [ <i>or obstructing, or polluting, or diverting water from</i> ] a watercourse. The plaintiff's claim is for damages for wrongfully discharging water upon the plaintiff's land [ <i>or into the plaintiff's mine</i> ]. The plaintiff's claim is for damages for wrongfully obstructing the plaintiff's use of a well.
Pasture.	The plaintiff's claim is for damages for the infringement of the plaintiff's right of pasture. [ <i>This Form shall be sufficient whatever the nature of the right to pasture be.</i> ]
Light.	The plaintiff's claim is for damages for obstructing the access of light to plaintiff's house.
Sporting.	The plaintiff's claim is for damages for the infringement of the plaintiff's right of sporting.
Patent.	The plaintiff's claim is for damages for the infringement of the plaintiff's patent.
Copyright.	The plaintiff's claim is for damages for the infringement of the plaintiff's copyright.
Trade mark.	The plaintiff's claim is for damages for wrongfully using [ <i>or imitating</i> ] the plaintiff's trade mark.
Work.	The plaintiff's claim is for damages for breach of a contract to build a ship [ <i>or to repair a house, &amp;c.</i> ]. The plaintiff's claim is for damages for breach of a contract to employ the plaintiff to build a ship, &c.
Nuisance.	The plaintiff's claim is for damages to his house, trees, crops, &c., caused by noxious vapours from the defendant's factory [ <i>or, &amp;c.</i> ].
Nuisance.	The plaintiff's claim is for damages from nuisance by noise from the defendant's works [ <i>or stables, or, &amp;c.</i> ].
Innkeeper.	The plaintiff's claim is for damages for loss of the plaintiff's goods in the defendant's inn.
	<i>Add to Indorsement :—</i>
Mandamus.	And for a mandamus commanding the defendant to
	<i>Add to Indorsement :—</i>
Injunction.	And for an injunction to restrain the defendant from
	<i>Add to Indorsement where claim is to land, or to establish title, or both :—</i>
Mesne profits.	And for mesne profits.
Arrears of rent.	And for an account of rents or arrears of rent.
Breach of covenant.	And for breach of covenant for [ <i>repairs</i> ].

SECTION V.

PROBATE.

Appendix A.  
Part III.  
ss. 5, 6.

1.

The plaintiff claims to be executor of the last will dated the day of of *C. W.*, late of gentleman, deceased, who died on the day of , and to have the said will established. This writ is issued against you as one of the next of kin of the said deceased [*or as the case may be*].

By an executor or legatee propounding a will in solemn form.

2.

The plaintiff claims to be executor of the last will dated the day of of *C. D.*, late of deceased, who died on the day of , and to have the probate of a pretended will of the said deceased, dated the day of revoked. This writ is issued against you as the executor of the said pretended will [*or as the case may be*].

By an executor or legatee of a former will, or a next of kin, &c., of the deceased seeking to obtain the revocation of a probate granted in common form.

3.

The plaintiff claims to be executor of the last will of *C. D.*, late of deceased, who died on the day of , dated the day of .

The plaintiff claims that the grant of letters of administration of the personal estate of the said deceased obtained by you should be revoked, and probate of the said will granted to him.

By an executor or legatee of a will when letters of administration have been granted as in an intestacy. By a person claiming a grant of administration as a next of kin of the deceased, but whose interest as next of kin is disputed.

4.

The plaintiff claims to be the brother and sole next of kin of *C. D.*, of , deceased, who died on the day of intestate, and to have as such a grant of administration to the personal estate of the said intestate. This writ is issued against you because you have entered a caveat, and have alleged that you are the sole next of kin of the deceased [*or as the case may be*].

SECTION VI.

ADMIRALTY.

1.

The plaintiffs as owners of the vessel "*Mary*," of the port of claim £1,000 against the brig or vessel "*Jane*" for damage occasioned by a collision which took place in the North Sea in the month of May last.

Damage to vessel by collision.

2.

The plaintiffs as owners of the cargo laden on board the vessel "*Mary*," of the port of claim £ against the vessel "*Jane*," for damage done to the said cargo in a collision in the North Sea in the month of May last.

Damage to cargo by collision.

[*The two previous forms may be combined.*]

3.

The plaintiff as owner of goods laden on board the vessel "*Mary*," on a voyage from Lisbon to England, claims from the owner of the said vessel £ for damage done to the said goods during such voyage.

Damage to cargo otherwise.

4.

The plaintiff as sole owner of the vessel "*Mary*," of the port of claims to have possession decreed to him of the said vessel.

In causes of possession.



**Appendix A.**  
**Part III.**  
**ss. 6, 7.**

5.

The plaintiff claims possession of the vessel "Mary," of the port of \_\_\_\_\_, as owner of 48-64th shares of the said vessel against *C. D.*, owner of 16-64th shares of the said vessel.

6.

The plaintiff as part owner of the vessel "Mary," claims against *C. D.*, part owner and his shares in the said vessel, £ \_\_\_\_\_ as part of the earnings of the said vessel due to plaintiff.

7.

The plaintiff as owner of 48-64th shares of the vessel "Mary," of the port of \_\_\_\_\_, claims possession of the said brig as against *C. D.*, the master thereof.

8.

The plaintiff under a mortgage, dated the \_\_\_\_\_ day of \_\_\_\_\_, claims against the vessel "Mary," £ \_\_\_\_\_, being the amount of his mortgage thereon, and £ \_\_\_\_\_ for interest.

9.

The plaintiff as assignee of a bottomry bond, dated the \_\_\_\_\_ day of \_\_\_\_\_, and granted by *C. D.*, as master of the vessel "Mary," of the port of \_\_\_\_\_, to *A. B.*, at St. Thomas's, in the West Indies, claims £ \_\_\_\_\_ against the vessel "Mary," and the cargo laden thereon.

10.

By a part  
owner of a  
vessel.

The plaintiff as owner of 24-64th shares of the vessel "Mary," being dissatisfied with the management of the said vessel by his co-owners, claims that his co-owners shall give him a bond in £ \_\_\_\_\_ for the value of the plaintiff's said shares in the said vessel.

11.

The plaintiffs as owners of the derelict vessel "Mary," of the port of \_\_\_\_\_, claim to be put in possession of the said vessel and her cargo.

12.

By salvors.

The plaintiffs as the owners, master, and crew of the vessel "Caroline," of the port of \_\_\_\_\_, claim the sum of £ \_\_\_\_\_ for salvage services performed by them to the vessel "Mary," off the Goodwin Sands, on the \_\_\_\_\_ day of \_\_\_\_\_.

13.

Claim for  
towage.

The plaintiffs, as owners of the steam-tug "Jane," of the port of \_\_\_\_\_, claim £ \_\_\_\_\_ for towage services performed by the said steam-tug to the vessel "Mary," on the \_\_\_\_\_ day of \_\_\_\_\_.

14.

Seamen's  
wages.

The plaintiffs, as seamen on board the vessel "Mary," claim £ \_\_\_\_\_ for wages due to them, as follows (1), the mate £30 for two months' wages from the \_\_\_\_\_ day of \_\_\_\_\_.

15.

For neces-  
saries.

The plaintiffs claim £ \_\_\_\_\_ for necessaries supplied to the vessel "Mary," at the port of Newcastle-on-Tyne, delivered on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_.

## SECTION VII.

### INDORSEMENTS OF CHARACTER OF PARTIES.

Executors.

The plaintiff's claim is as executor [or administrator] of *C. D.*, deceased, for, &c.

The plaintiff's claim is against the defendant *A. B.*, as executor [*or, &c.*] of *C. D.*, deceased, for, &c.

**Appendix A.**  
**Part III.**  
**s. 7.**

The plaintiff's claim is against the defendant *A. B.*, as executor of *X. Y.*, deceased, for, &c., and against the defendant *C. D.*, in his personal capacity, for, &c.

The plaintiff's claim is as trustee under the bankruptcy of *A. B.* for

Trustee in  
bankruptcy.  
Trustee.

The plaintiff's claim is as [*or the plaintiff's claim is against the defendant as*] trustee under the will of *A. B.* [*or under the settlement upon the marriage of* *A. B.* and *X. Y.*, his wife].

The plaintiff's claim is as public officer of the Bank for

Public officer.

The plaintiff's claim is against the defendant as public officer of the Bank, for

The plaintiff's claim is against the defendant *A. B.* as principal, and against the defendant *C. D.* as public officer of the Bank, as surety, for

The plaintiff's claim is against the defendant as heir-at-law of *A. B.*, deceased.

Heir and  
devisee.

The plaintiff's claim is against the defendant *C. D.* as heir-at-law, and against the defendant *E. F.* as devisee of lands under the will of *A. B.*

The plaintiff's claim is as well for the Queen as for himself for

*Qui tam* action.

## APPENDIX B.

**Appendix B.**  
**No. 1.**

### NOTICES, &c.

#### No. 1.

188 .

[*Here put the letter and number.*]

Third party  
notice.

In the High Court of Justice.  
Division.

Between *A. B.*, Plaintiff,  
and  
*C. D.*, Defendant.  
Notice filed , 188 .

To Mr. *X. Y.*

Take notice that this action has been brought by the plaintiff, against the defendant [as surety for *M. N.*, upon a bond conditioned for payment of £2,000 and interest to the plaintiff.

The defendant claims to be entitled to contribution from you to the extent of one-half of any sum which the plaintiff may recover against him on the ground that you are (his co-surety under the said bond, *or*, also surety for the said *M. N.*, in respect of the said matter, under another bond made by you in favour of the said plaintiff, dated the day of , A.D. ).

*Or* [as acceptor of a bill of exchange for £500, dated the day of , A.D. , drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation.]

**Appendix B.**  
**Nos. 1—4.**

*Or* [as acceptor of a bill of exchange for £500, dated the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, drawn by you upon and accepted by the defendant, and payable three months after date.

The defendant claims to be indemnified by you against liability under the said bill, on the ground that it was accepted for your accommodation].

*Or* [to recover damages for a breach of a contract for the sale and delivery to the plaintiff of 1,000 tons of coal.

The defendant claims to be indemnified by you against liability in respect of the said contract, or any breach thereof, on the ground that it was made by him on your behalf and as your agent].

And take notice that, if you wish to dispute the plaintiff's claim in this action as against the defendant *C. D.*, or your liability to the defendant *C. D.*, you must cause an appearance to be entered for you within eight days after service of this notice.

In default of your so appearing, you will be deemed to admit the validity of any judgment obtained against the defendant *C. D.*, and your own liability to contribute or indemnify to the extent herein claimed, which may be summarily enforced against you pursuant to the Rules of the Supreme Court, 1883, Order XVI., Part VI.

(Signed) *E. T.*

*Or,*  
*X. Y.,*

Solicitor for the defendant,  
*E. T.*

Appearance to be entered at \_\_\_\_\_.

[NOTE.—See O. XVI., r. 48, *ante*, p. 188.]

**No. 2.**

[Heading as in Form 1.]

Notice of  
counter-claim.

"To the within-named *X. Y.*

"Take notice that if you do not appear to the within counter-claim of the within-named *C. D.* within eight days from the service of this defence and counter-claim upon you, you will be liable to have judgment given against you in your absence.

"Appearance to be entered at \_\_\_\_\_."

**No. 3.**

[Heading as in Form 1.]

Notice of  
payment into  
Court.

Take notice that the defendant has paid into Court £ \_\_\_\_\_, and says that that sum is enough to satisfy the plaintiff's claim [*or the plaintiff's claim, for, &c.*].

To Mr. *X. Y.*,  
the Plaintiff's Solicitor.

*Z.*,  
Defendant's Solicitor.

**No. 4.**

[Heading as in Form 1.]

Acceptance  
of sum paid  
into Court.

Take notice that the plaintiff accepts the sum of £ \_\_\_\_\_, paid by you into Court in satisfaction of the claim in respect of which it is paid in.



**No. 5.**

[Heading as in Form 1.]

**Appendix B.**  
**Nos. 5—8.**

The plaintiff confesses the defence stated in the  
defendant's defence [or, of the defendant's further defence].

paragraph of the Confession of  
defence.

**No. 6.**

18 . . [Here put the letter and number.] **Interroga-**  
**tories.**

In the High Court of Justice.  
Division.

Between *A. B.*, Plaintiff,  
and  
*C. D.*, *E. F.*, and *G. H.*, Defendants.

Interrogatories on behalf of the above-named [*plaintiff or defendant, C. D.*]  
for the examination of the above-named [*defendants E. F. and G. H., or plaintiff*].

1. Did not, &c.
2. Has not, &c.

&c.      &c.      &c.

[The defendant *E. F.* is required to answer the interrogatories  
numbered . . .]

[The defendant *G. H.* is required to answer the interrogatories  
numbered . . .]

**No. 7.**

[Heading as in Form 6.]

**Answer to in-**  
**terrogatories.**

The answer of the above-named defendant *E. F.* to the interrogatories for his  
examination by the above-named plaintiff.

In answer to the said interrogatories, I, the above-named *E. F.*, make oath  
and say as follows:—

**No. 8.**

[Heading as in Form 1.]

**Affidavit as to**  
**documents.**

I, the above-named defendant *C. D.*, make oath and say as follows:—

1. I have in my possession or power the documents relating to the matters in  
question in this suit set forth in the first and second parts of the first schedule  
hereto.

2. I object to produce the said documents set forth in the second part of the  
said first schedule hereto.

3. That [*here state upon what grounds the objection is made, and verify the facts*  
*as far as may be*].

4. I have had, but have not now, in my possession or power the documents  
relating to the matters in question in this suit set forth in the second schedule  
hereto.

5. The last-mentioned documents were last in my possession or power on  
[*state when*].

6. That [*here state what has become of the last-mentioned documents, and in whose*  
*possession they now are*].

**Appendix B.  
Nos. 8—11.**

7. According to the best of my knowledge, information, and belief, I have not now, and never had in my possession, custody, or power, or in the possession, custody, or power of my solicitors or agents, solicitor or agent, or in the possession, custody, or power of any other persons or person on my behalf, any deed, account, book of account, voucher, receipt, letter, memorandum, paper, or writing, or any copy of or extract from any such document, or any other document whatsoever, relating to the matters in question in this suit, or any of them, or wherein any entry has been made relative to such matters, or any of them, other than and except the documents set forth in the said first and second schedules hereto.

**No. 9.**

[Heading as in Form 1.]

Notice to  
produce docu-  
ments.

Take notice that the [*plaintiff or defendant*] requires you to produce for his inspection the following documents referred to in your [*statement of claim, or defence, or affidavit, dated the*                      *day of*                      , A.D.].

[Describe documents required.]

X. Y.,

Solicitor to the

To Z.,  
Solicitor for

**No. 10.**

[Heading as in Form 1.]

Notice to in-  
spect docu-  
ments.

Take notice that you can inspect the documents mentioned in your notice of the                      day of                      , A.D. [*except the deed numbered*                      *in* *that notice*] at [*insert place of inspection*] on Thursday next, the                      instant, between the hours of 12 and 4 o'clock.

Or that the [*plaintiff or defendant*] objects to giving you inspection of the documents mentioned in your notice of the                      day of                      , A.D. , on the ground that [*state the ground*] :—

[NOTE.—See as to bank books or commercial books, O. XXXI., r. 17, *ante*, p. 263.]

**No. 11.**

[Heading as in Form 1.]

Notice to admit  
documents.

Take notice that the plaintiff [*or defendant*] in this cause proposes to adduce in evidence the several documents hereunder specified, and that the same may be inspected by the defendant [*or plaintiff*], his solicitor or agent, at                      , on                      , between the hours of                      ; and the defendant [*or plaintiff*] is hereby required, within forty-eight hours from the last mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been ; that such as are specified as copies are true copies ; and such documents as are stated to have been served, sent, or delivered, were so served, sent, or delivered respectively ; saving all just exceptions to the admissibility of all such documents as evidence in this cause.

Dated, &c.

(Signed)

To E. F., solicitor [*or agent*] for  
defendant [*or plaintiff*].

G. H., solicitor [*or agent*] for plaintiff [*or defendant*].

[Here describe the documents, the manner of doing which may be as follows :—]

Appendix B.  
Nos. 11, 12.

ORIGINALS.

Description of Documents.	Dates.
Deed of covenant between <i>A. B.</i> and <i>C. D.</i> first part, and <i>E. F.</i> second part .....	January 1, 1848.
Indenture of lease from <i>A. B.</i> to <i>C. D.</i> .....	February 1, 1848.
Indenture of release between <i>A. B.</i> , <i>C. D.</i> first part, &c. ..	February 2, 1848.
Letter, defendant to plaintiff .....	March 1, 1848.
Policy of insurance on goods by ship " <i>Isabella</i> ," on voyage from Oporto to London .....	December 3, 1847.
Memorandum of agreement between <i>C. D.</i> , captain of said ship, and <i>E. F.</i> .....	January 1, 1848.
Bill of exchange for £100 at three months, drawn by <i>A. B.</i> on and accepted by <i>C. D.</i> , indorsed by <i>E. F.</i> and <i>G. H.</i> ..	May 1, 1849.

COPIES.

Description of Documents.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.
Register of baptism of <i>A. B.</i> in the parish of <i>X.</i> .....	January 1, 1848.	Sent by General Post, February 2, 1848. Served March 2, 1848, on defendant's at- torney by <i>E. F.</i> , of—.
Letter—plaintiff to defendant ..	February 1, 1848.	
Notice to produce papers .....	March 1, 1848.	
Record of a Judgment of the Court of Queen's Bench in an action, <i>F. S. v. F. N.</i> .....	Trinity Term, 10th Vict.	
Letters Patent of King Charles II. in the Rolls Chapel .....	January 1, 1680.	

No. 12.

[Heading as in Form 1.]

Notice to  
admit facts.

Take notice that the plaintiff [*or defendant*] in this cause requires the defendant [*or plaintiff*] to admit, for the purposes of this cause only, the several facts respectively hereunder specified : and the defendant [*or plaintiff*] is hereby required, within six days from the service of this notice, to admit the said several facts, saving all just exceptions to the admissibility of such facts as evidence in this cause.

Dated, &c.

*G. D.*, solicitor [*or agent*] for the plaintiff [*or defendant*].  
To *E. F.*, solicitor [*or agent*] for the defendant [*or plaintiff*].

The facts, the admission of which is required, are—

1. That John Smith died on the 1st of January, 1870.
2. That he died intestate.
3. That James Smith was his only lawful son.
4. That Julius Smith died on the 1st of April, 1876.
5. That Julius Smith never was married.

[NOTE.—See O. XXXII., r. 4, *ante*, p. 269.]





**Appendix B.  
Nos. 16—20.**

**No. 16.**

[Heading as in Form 1.]

Take notice of trial of this [or of the issues in this] ordered to  
be tried] [or as the case may be] in [or as the case may be] for the  
day of next.

Notice of  
trial.

X. Y., plaintiff's solicitor [or as the case may be].

Dated

To Z., defendant's solicitor [or as the case may be].

**No. 17.**

[Heading as in Form 1.]

I certify that this was tried before the Honourable Mr. Justice  
with a special jury of the county of , on the 12th and 13th days of No-  
vember, 1876.

Certificate of  
officer after  
trial with a  
jury.

The jury found [state findings].

The Judge directed that judgment should be entered for the plaintiff for  
£ with costs of summons [or as the case may be].

A. B.,  
[Title of officer.]

The day of , 18 .

**No. 18.**

[Heading as in Form 1.]

Take notice, that the Court will be moved on day the  
day of , 18 , at o'clock in the forenoon, or so soon thereafter  
as counsel can be heard, by that

Notice of  
motion.

Dated the day of , 18 .

(Signed)

of , agent for solicitor for the

To

**No. 19.**

[Heading as in Form 1.]

Take notice, that the plaintiff hereby ["wholly discontinues this action," or  
"withdraws so much of his claim in this action as relates to," &c. If not against  
all the defendants, add, "as against the defendant," &c.]

Notice of dis-  
continuance.

Dated the day of , 18 .

(Signed)

of , agent for solicitor for the  
plaintiff

To

**No. 20.**

[Heading as in Form 1.]

Take notice, that the intend at the trial of this action to cross-examine  
the several deponents named and described in the schedule hereto on their affi-  
davits therein specified.

Notice of  
cross-exami-  
nation of  
deponents at  
trial.

**Appendix B.** And also take notice, that you are hereby required to produce the said deponents for such cross-examination before the Court aforesaid.

**Nos. 20—23.** Dated the                      day of                      , 18 .  
(Signed)                      agent for                      of                      solicitor for the

To                      .

THE SCHEDULE above referred to.

Name of Deponent.	Address and Description.	Date when Affidavit filed.

### No. 21.

[Heading as in Form 1.]

Notice of  
renewal of  
writ of exe-  
cution.

Take notice, that the writ of                      , issued in this action, directed to the sheriff of                      , and bearing date the                      day of                      , 18 , has been renewed for one year from the                      day of                      , 18 .

Dated the                      day of                      , 18 .  
(Signed)                      of                      , agent for                      , solicitor for the

To the sheriff of                      .

### No. 22.

Notice as to  
stock under  
O. XLVI.

To the [here add the name of the company].

Take notice, that the stock comprised in and now subject to the trusts of the [settlement, will, &c.] referred to in the affidavit to which this notice is annexed, consists of the following (that is to say) [here specify the stock].

This notice is intended to stop the transfer of the stock only, and not the receipt of dividends [or, the receipt of the dividends on the stock as well as the transfer of the stock].

(Signed)                      A. B.

[NOTE.—See now, as to renewal of notice, O. XLVI., r. 14, ante, p. 365.]

### No. 23.

[Heading as in Form 1.]

Affidavit of  
service of  
summons.

I,                      , of                      , solicitor for the above-named                      , make oath and say as follows:—

I did on the                      day of                      , 18 , before the hour of                      , in the                      noon, serve                      the above-named                      in this action with a true copy duly stamped of the summons hereto annexed, marked A, by leaving it at the                      of the said                      , situate                      , with                      there                      .

Sworn at                      this                      , }  
day of                      , 18 . }

Before me,

This affidavit is filed on behalf of the                      .



No. 24.

Appendix B.  
Nos. 24—26.

In the High Court of Justice.  
Division.

Affidavit on  
registration  
of bill of sale.

I, \_\_\_\_\_, of \_\_\_\_\_, 18 . . . No. . . make oath and say as follows:—  
1. The paper writing hereto annexed and marked A is a true copy of a bill of sale, and of every schedule or inventory thereto annexed or therein referred to, and of every attestation of the execution thereof, as made and given and executed by \_\_\_\_\_  
2. The said bill of sale was made and given by the said \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_, 18 . . .  
3. I was present and saw the said \_\_\_\_\_ duly execute the said bill of sale on the said \_\_\_\_\_ day of \_\_\_\_\_, 18 . . .  
4. The said \_\_\_\_\_ resides at [state residence at time of swearing affidavit] and is [state occupation].  
5. The name \_\_\_\_\_ subscribed to the said bill of sale as that of the witness attesting the due execution thereof is in the proper handwriting of me this deponent.  
6. I am a solicitor of the Supreme Court, and reside at \_\_\_\_\_  
7. Before the execution of the said bill of sale by the said \_\_\_\_\_, I fully explained to \_\_\_\_\_ the nature and effect thereof.  
Sworn, &c.

[NOTE.—By s. 10 of the Bills of Sale Act, 1882, the two last paragraphs of the affidavit are unnecessary in the case of bills of sale within that Act. In the case of absolute bills of sale within the Act of 1878, these two paragraphs are necessary: *Casson v. Churchley*, 53 L. J., Q. B. 335.]

No. 25.

In the High Court of Justice.  
Division.

Affidavit in  
support of  
garnishee  
order.

Between \_\_\_\_\_, 18 . . . No. . . Judgment Creditor,  
and \_\_\_\_\_, Judgment Debtor.  
I, \_\_\_\_\_, of \_\_\_\_\_, the above-named judgment creditor [or solicitor for the above-named judgment creditor] make oath and say as follows:—  
1. By a judgment of the Court given in this action, and dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 . . . it was adjudged that I [or the above-named judgment creditor] should recover against the above-named judgment debtor \_\_\_\_\_, the sum of £ \_\_\_\_\_, and costs to be taxed, and the said costs were by a master's certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 . . . allowed at £ \_\_\_\_\_  
2. The said \_\_\_\_\_ still remains unsatisfied to the extent of \_\_\_\_\_ and interest amounting to £ \_\_\_\_\_  
3. [Name, address, and description of garnishee] is indebted to the judgment debtor \_\_\_\_\_, in the sum of £ \_\_\_\_\_, or thereabouts.  
4. The said \_\_\_\_\_ is within the jurisdiction of this Court.  
Sworn, &c.

No. 26.

[Heading as in Form 1.]

Affidavit on  
interpleader.

I, \_\_\_\_\_, of \_\_\_\_\_, the defendant in the above action, make oath and say as follows:—  
1. The writ of summons herein was issued on the \_\_\_\_\_ day of \_\_\_\_\_, 18 . . . and was served on me on the \_\_\_\_\_ day of \_\_\_\_\_, 18 . . .

**Appendix B.**  
**Nos. 26, 27.**

2. The action is brought to recover . The said [“is” or “are”] in my possession, but I claim no interest therein.

3. The right to the said subject-matter of this action has been and is claimed [if claim in writing, make the writing an exhibit] by one who [state expectation of suit, or that he has already sued].

4. I do not in any manner collude with the said or with the above-named plaintiff, but I am ready to bring into Court or to pay or dispose of the said in such manner as the Court may order or direct.

Sworn, &c.

---

**No. 27.****Affidavit as  
to stock under  
O. XLVI.**

In the matter of [here state the nature of the document comprising the stock, and add the date and other particulars, so far as known to the deponent, sufficiently to identify the document];

and

In the matter of the Act of Parliament, 5 Vict. c. 5.

I, , of , make oath and say that according to the best of my knowledge, information, and belief, I am [or, if the affidavit is made by the solicitor, A. B. of , is] beneficially interested in the stock comprised in the [settlement, will, &c.] above mentioned, which stock, according to the best of my knowledge and belief, now consists of the stock specified in the notice hereto annexed.

This affidavit is filed on behalf of A. B., whose address is [state address for service].

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**APPENDIX C.**

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**Appendix C. FORMS OF STATEMENTS OF CLAIM TO BE USED PURSUANT TO ORDER XIX., RULE 5.**

[By O. XIX., r. 5, *ante*, p. 205, the Forms in Appendix C., D., and E., when applicable, and where they are not applicable, as near as may be, shall be used for all pleadings, and where such Forms are applicable and sufficient, any longer Forms shall be deemed prolix, and the costs occasioned by such prolixity shall be disallowed to or borne by the party so using the same, as the case may be.

See further, note to that rule, *ante*, p. 206, and O. LXV., r. 27 (20), *ante*, p. 492.

As to the rules of pleading specially applicable to Statements of Claim, see O. XX., *ante*, p. 214.]

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SECTION I.

Appendix C.  
ss. 1, 2.

18 . [*Here put letter and number.*] General.

In the High Court of Justice.  
Division.

Writ issued the of , 18 .  
Between A.B., Plaintiff,  
and  
C.D., Defendant.

Statement of Claim.

The plaintiff, &c.

[*or*]  
The plaintiff's claim, is, &c.

[*To be filled up in manner exemplified in the following forms.*]

The plaintiff claims [*as in following forms*].

Place of trial

(Signed)

Delivered the of , 18 .

[NOTE.—The address, &c., of the solicitor need not appear on the face of the pleading; it is sufficient if it is indorsed on the back: O. XIX., r. 11, *ante*, p. 208.]

SECTION II.

No. 1.

ACTIONS SPECIALLY ASSIGNED TO THE CHANCERY DIVISION BY S. 34, SUB-S. 3 OF  
THE PRINCIPAL ACT (*a*).

No. 1.

The plaintiff is a creditor of X. Y. deceased, of whom the defendant C. D. Adminis-  
is executor (*or* administrator), and the defendant E. F. is heir-at-law (*or* devisee). tration.

Particulars of the claim :

Principal due on the bond of the testator ( <i>or</i> intestate)			
dated the	of	, 18 .	£2,000 0 0
Interest from the	of	, at	
5 per cent.			250 0 0
			<u>£2,250 0 0</u>

The plaintiff claims to be paid the amount due to him, or to have the real and  
personal estate of the said X. Y. administered.

(Signed)

Delivered

(*a*) The fourteen forms which follow are applicable to actions which can only  
be commenced in the Chancery Division. For forms of pleadings in actions  
usually brought there, but which may be brought in the Queen's Bench  
Division—*e.g.*, actions for injunctions, see Sect. VI., Nos. 6 *et seq.*, *post*, p. 567.



**Appendix C.**

s. 2.

**Nos. 2—4.**Wilful  
default.**No. 2.**

1. The plaintiff is residuary legatee of *A. B.*, of the city of Bath, who died March 3, 1882, having made his will dated March 2, 1882, and appointed the defendants his executors, who proved his will April 6, 1882.

2. The defendants have been guilty of wilful default in not getting in certain property of the testator.

3. The wilful default on which the plaintiff relies is as follows :

*C. D.* owed to the testator £1,000, in respect of which no interest had been paid or acknowledgment given for five years before the testator's death. The defendants were aware of this fact, but never applied to *C. D.* for payment until more than a year after testator's death, whereby the said sum was lost.

The plaintiff claims :—

- (1.) Account of testator's personal estate on footing of wilful default.
- (2.) Administration of the testator's personal estate.

(Signed)

Delivered

**No. 3.**Dissolution of  
partnership.

1. The plaintiff, on December 20th, 1875, entered into partnership articles with the defendant for 10 years.

2. The defendant has broken the partnership articles as follows :—

*a.**b.**c.*

The plaintiff claims :—

1. Dissolution.
2. Accounts and inquiries.
3. A receiver and manager.

(Signed)

Delivered

**No. 4.**

For accounts.

1. The plaintiffs are executors of *A.*, deceased.

2. From the year 1875 till his death *A.* employed the defendant as his confidential agent in the management of a large building estate at *X.*

3. The defendant as such agent received large sums of money for the said *A.*, for which he refuses to account.

The plaintiffs claim :—

1. Accounts of all sums received and paid by the defendant as agent of *A.*
2. Payment of the amount found due.

(Signed)

Delivered

No. 5.

1. The plaintiff is mortgagee of lands belonging to the defendant.
2. The following are the particulars of the mortgage :—

- (a.) (Date and names of mortgagor and mortgagee.)
- (b.) (Sum secured.)
- (c.) (Rate of interest.)
- (d.) (Property subject to mortgage.)
- (e.) (Amount now due.)

(If the plaintiff's title is a derivative title, state shortly the assignments under which he claims.)

(If the plaintiff is mortgagee in possession add) :

3. The plaintiff took possession of the mortgaged property on the \_\_\_\_\_, and is ready to account as mortgagee in possession from that time.

The plaintiff claims payment, or, in default, sale, or foreclosure (and possession).

(Signed)

Delivered

[NOTE.—Where a statement of claim followed this form, and did not set out the mortgagor's covenant for payment of the mortgage debt, Kay, J., refused to include in the foreclosure judgment an order for personal payment against the mortgagor : *Wethered v. Cox*, W. N. (1888), 165.]

No. 6.

1. The plaintiff is mortgagor of lands, of which the defendant is mortgagee. Redemption.
2. The following are the particulars of the mortgage :

- (a.) (Date.)
- (b.) (Sum secured.)
- (c.) (Rate of interest.)
- (d.) (Property subject to mortgage.)

(If the plaintiff's title is derivative, state shortly the deeds under which he claims.)

(If the defendant is mortgagee in possession add) :

3. The defendant has taken possession (or has received the rents) of the mortgaged property.

The plaintiff claims to redeem the said premises, and to have the same reconveyed to him, [and to have possession thereof].

(Signed)

Delivered

No. 7.

1. By a settlement on the marriage of *A. B.* and *C. B.*, dated January 10, 1850, Whiteacre was demised to trustees for 1,000 years on trust after the deaths of *A. B.* and *C. B.* to raise 5,000*l.* for the younger children of the marriage who should attain 21. For raising portions or other charges on land.

2. *A. B.* died February 15, 1870.

3. *C. B.* died June 10, 1875.

4. There were five children only of the marriage of *A. B.* and *C. B.*, all of whom are now living, and have attained 21. The plaintiff is the second born child.

5. The defendants were on April 5, 1877, appointed trustees of the settlement.

The plaintiff claims :

1. To have 5,000*l.* raised by sale or mortgage and distributed among the persons entitled.

(Signed)

Delivered

Appendix C.

s. 2.

Nos. 5—7.

Foreclosure or sale.

**Appendix C.**  
**s. 2.**  
**Nos. 8—10.**

Sale and  
distribution  
of proceeds  
of property  
subject to any  
lien or charge.

**No. 8.**

1. On November 12, 1880, *A.* and the defendant *B.* deposited with the plaintiff 500 Russian Government Bonds as security for a debt of 1,000*l.* and interest at 4 per cent. due from *A.* and the defendant *B.* to the plaintiff.

2. *A.* died March 12, 1881.

3. On March 30, 1881, administration of the estate of *A.* was granted to the defendant *C.*

4. 800*l.* and 30*l.* for interest is owing to the plaintiff on the security of the said bonds.

The plaintiff claims :

1. Sale of the said bonds.
2. Application of the proceeds in payment of his debt.
3. Distribution of the surplus among the parties entitled.

(Signed)  
Delivered

**No. 9.**

Breach of  
trust.

1. By a settlement dated July 3rd, 1872, on the marriage of the plaintiffs' father and mother, of which the defendant *A. B.* and one *C. D.* were trustees, the plaintiffs are absolutely entitled on the deaths of their father and mother.

2. On August 5, 1874, *C. D.* died, and the defendant *E. F.* was appointed in his place.

3. On December 1, 1879, the plaintiffs' father died.

4. On January 1, 1880, the plaintiffs' mother died.

5. The defendants have committed the following breaches of trust by :

(a.) Sale of 3,000*l.* Bank Stock and investment of the proceeds in the business of the defendant *A. B.*

(b.) Sale of leasehold property worth 5,000*l.* to *G. H.* for 1,000*l.* [without taking any proper steps to ascertain its value or to obtain such value].

[omit.]

The plaintiffs claim :

(1.) The replacement of 3,000*l.* Bank Stock and 5*l.* per cent interest on the proceeds of the Bank Stock sold from the date of sale till replacement.

(2.) Payment of 4,000*l.* and interest at 5 per cent. per annum from the date of the sale.

(Signed)  
Delivered

**No. 10.**

Execution of  
trust.

1. By a settlement dated June 10, 1856, upon trust for *A. B.* and *C. D.* successively for life, with remainder for their children who should attain 21, the following property was assured :—

a. A sum of 5,735*l.* 14*s.* 2*d.* Consolidated 3*l.* per Cent. Annuities.

b. 4,000*l.* invested on mortgage of land at X.

c. One-fifth of the residuary estate of *D.*, deceased, subject to a prior life interest.

2. On August 15, 1862, *C. B.* died.



3. On February 18, 1875, *A. B.* died.
4. On September 10, 1879, *D.* died.
5. *A. B.* and *C. B.* had five children only, of whom the plaintiff is one.
6. The defendants are the present trustees of the settlement.

Appendix C.  
s. 2.  
Nos. 10—12.

The plaintiff claims :

1. Execution of the trusts of the settlement.
2. All necessary accounts and inquiries.
3. A receiver.

(Signed)  
Delivered

No. 11.

1. In 1865 a marriage was arranged between *A. B.* and the plaintiff.
2. By an agreement contained in two letters, dated February 10 and 12, 1865, it was agreed between *C. B.*, the father of *A. B.*, and *D.*, the father of the plaintiff, that each should settle 10,000*l.* on trust for *A. B.* and the plaintiff successively for life, with remainder on the usual trusts for the children of the marriage.
3. By letter, dated March 7, 1865, from *D.* to Messrs. *E. & Co.*, his solicitors, he instructed them to prepare a settlement.
4. A settlement, dated April 25, 1865, was executed upon the marriage of *A. B.* and the plaintiff, accidentally omitting to give a life interest to the plaintiff after the life interest of *A. B.*
5. On May 20, 1882, *A. B.* died.
6. The defendants *H.* and *K.* are the present trustees of the settlement.
7. The defendants *L.*, *M.*, and *N.*, are the only children of the marriage.

For rectifica-  
tion, &c. of  
instruments.

The plaintiff claims :

Rectification of the settlement.

(Signed)  
Delivered

No. 12.

1. By an agreement (*or*, letters) dated (*or* made verbally at interviews on or about) the of , the plaintiff agreed to sell to the defendant the Home Farm, Kent, for £ . The sale was to be completed on the day of .

Specific per-  
formance.

(If the agreement was verbal, add—)

2. The agreement so entered into has been part performed as follows (*state how*).

The plaintiff claims specific performance of the above agreement, and that the defendant may be ordered to execute a proper conveyance of the premises to the plaintiff (*stating in each case what the defendant is required specifically to do*).

(Signed)  
Delivered

Appendix C.  
s. 2.  
Nos. 13, 14.

Partition or  
sale of real  
estates.

No. 13.

1. By will, dated January 5, 1864, *A.* devised Whiteacre to *B.*, *C.*, and *D.* as tenants in common.
2. On March 10, 1865, *A.* died.
3. On March 20, 1865, *A.*'s will was proved.
4. On June 25, 1867, *B.* conveyed to the plaintiff his share of Whiteacre.
5. On July 30, 1869, *C.* conveyed his share to the defendants on trust for sale.
6. By will, dated November 5, 1872, *D.* devised his share among his children equally.
7. On December 2, 1872, *D.* died.
8. On December 15, 1872, *D.*'s will was proved.
9. There were 10 children of *D.* living at his decease, some of whom have since died.

[10. Whiteacre consists of a mansion, house, and grounds.

11. A sale of the property and a division of the proceeds will be more beneficial than a division of the property.]

The plaintiff claims:

A division of Whiteacre among the parties interested.

[*or*, a sale of Whiteacre and distribution of the proceeds among the parties interested.]

(Signed)  
Delivered

No. 14.

Wardship of  
infants and  
care of infants'  
estates.

1. By will, dated August 10, 1882, *A.* devised Whiteacre and £10,000 to defendant on trust for plaintiff.
2. On August 15, 1882, *A.* died.
3. On August 30, 1882, probate was granted to the defendant, the sole executor.
4. The plaintiff is an infant 12 years old.

The plaintiff claims:

1. That the plaintiff may become a ward of Court.

2. Administration of the trusts of the will of *A.* so far as necessary.

(Signed)  
Delivered

SECTION III.

No. 1.

ACTIONS WITHIN THE EXCLUSIVE COGNIZANCE OF THE PROBATE, DIVORCE AND ADMIRALTY DIVISION. SECTION 34 OF THE PRINCIPAL ACT (*a*).

No. 1.

Interest suit  
(Probate).

The plaintiff is cousin-german and one of the next of kin of *M. N.*, late of No. 1, High Street, Putney, in the county of Surrey, grocer, who died on or

(*a*) For forms of claims in actions commonly brought in the Admiralty Division, though also brought in the Queen's Bench Division, see Sect. V., Forms Nos. 4, 5, *post*, pp. 565, 566.

about the 1st of March, 1883, a widower without child, parent, brother or sister, uncle or aunt, nephew or niece.

Appendix C.

s. 3.

Nos. 1—4.

The plaintiff claims:

A grant to him of letters of administration of the personal estate and effects of the said deceased.

(Signed)  
Delivered

No. 2.

The plaintiff is the executor appointed under the will of *C. T.*, late of Bicester, in the county of Oxford, gentleman, who died on the 20th of January, 1883, the said will bearing date the 1st of January, 1875, and a codicil thereto, the 1st of October, 1875.

Probate of will in solemn form.

The plaintiff claims:

That the Court shall decree probate of the said will and codicil in solemn form of law.

(Signed)  
Delivered

No. 3.

1. A bond, dated the 13th of October, 1883, was executed by the master of the ship "Onward," at Mauritius, binding the said ship and her cargo—viz., 940 tons of teak timber—and her freight, for payment unto Messrs. H. & Co., their assigns, order, or indorsees, of 24,000 dollars, Mauritius currency, with maritime premium at the rate of 128 dollars for every 100 dollars, within 20 days next after the arrival of the said ship at her port of discharge. Payment to be made both of capital and interest in British sterling money at the rate of four shillings for every dollar.

Bottomry.

2. The plaintiffs are assignees of the said bond from the said Messrs. H. & Co.

The plaintiffs claim:

1. That the Court pronounce for the validity of the bond.
2. Condemnation of the defendants and their bail in the sum of £

(Signed)  
Delivered

No. 4.

The plaintiff supplied necessaries and equipment, and did repairs to the vessel "The Ellen," in the months of February and March, 1883, at the port of London, on the order of Messrs. K. L., who were duly authorized in that behalf; the said vessel being a British Colonial vessel, belonging to the port of Digby, in Nova Scotia, and having no owner or part owner who was at the time of the commencement of this action, or is, domiciled in England or Wales.

Equipment and necessaries.

The plaintiff claims:

1. £305 3s., with interest thereon at 5 per cent. per annum from the 19th of February, 1883, until judgment.
2. The condemnation of the defendant and his bail in the said sum.

(Signed)  
Delivered



## Appendix C.

s. 3.

Nos. 5, 6.

## No. 5.

Possession.

The plaintiff is owner of 32-64th parts or shares, and master of the vessel "Lady of the Lake," and the defendant, who is owner of the remaining 32-64th parts, withheld possession of the said vessel from the plaintiff.

The plaintiff claims:

1. Possession of the said vessel.
2. The condemnation of the defendant in all losses and damages occasioned by the defendant's withholding possession of the vessel from the plaintiff.

(Signed)  
Delivered

## No. 6.

Salvage.

The plaintiffs are the owners, master, and crew of the steamship "Brazilian," of the port of Newcastle, of the burthen of 1,300 tons gross registered tonnage, and rendered salvage services to the steamship "Campanil" off the coast of Portugal, on or about the 26th and 27th of December, 1882.

Particulars:—

	£
1. Value of "Campanil" at the time of the services ....	13,000
Value of cargo.....	300
Freight.....	675
2. Value of "Brazilian," her freight and cargo .....	2,050
3. Damage sustained by "Brazilian" .....	150
Extra coal consumed .....	16
Paid for harbour dues, &c., at Vigo .....	4

The plaintiffs claim:

Such amount of salvage as may be just.

(Signed)  
Delivered

[NOTE.—In the case of *The Isis*, 8 P. D. 227, it was held that this form was insufficient.]

## SECTION IV.

## No. 1.

ACTIONS INCLUDED IN ORDER III., RULE 6, CLASSES A, B, C, D, E AND F.

[See O. III., r. 6, and O. XX., r. 1, *ante*, pp. 132, 214, and notes thereto. These, or the like forms, are to be used wherever the writ is specially indorsed. When the writ is specially indorsed the indorsement constitutes the statement of claim, and no further statement of claim can be delivered. When a general indorsement is used in one of the above classes of action, the statement of claim, if any, is to follow these forms.]

## No. 1.

Goods sold  
and delivered.

The plaintiff's claim is for the price of goods sold and delivered.

Particulars:—

1881—31st December.—	£	s.	d.
Balance of account for butcher's meat to this date....	35	10	0
1882—1st January to 31st March.—			
Butcher's meat .....	74	5	0
	109	15	0
1882—1st February.—Paid .....	45	0	0
Balance due.....	£64	15	0

Place of trial, London.

(Signed)  
Delivered

**No. 2.**

**Appendix C.**

**s. 4.**

**Nos. 2—4.**

The plaintiff's claim is for money received by the defendant for the use of the plaintiff.

Particulars :—

1882.—1st January.—

Money had  
and received.

	£	s.	d.
To amount of rents of No. 5, Smith Street, collected by the defendant.....	72	10	0
To deposit on intended sale of Eva Villa .....	100	0	0
Amount due .....	£172	10	0

Place of trial, London.

(Signed)  
Delivered

**No. 3.**

The plaintiff's claim is against the defendant, as maker of a promissory note for £250, dated 1st January, 1882, payable four months after date.

Payee against  
maker of a  
promissory  
note.

Particulars :—

	£
Principal .....	250
Interest .....	10
Amount due.....	£260

Place of trial, Lancashire, West Derby Division.

(Signed)  
Delivered

[NOTE.—See note to next Form.]

**No. 4.**

The plaintiff's claim is against the defendant, as acceptor of a bill of exchange for £400, dated 1st January, 1882, drawn by *A. B.*, payable three months after date to the order of *E. F.*, and indorsed to the plaintiff.

Indorsee  
against  
acceptor of  
a bill of  
exchange.

Particulars :—

	£
Principal due .....	400
Interest .....	16
Amount due .....	£416

(Signed)  
Delivered

[NOTE.—By s. 57 of the Bills of Exchange Act, 1882 (45 & 46 Vict. c. 61), notarial expenses and re-exchange when recoverable are "to be deemed to be liquidated damages," and therefore may be claimed under this indorsement. By s. 89 of that Act provisions relating to bills are with certain specified modifications applied to notes, and by s. 73 cheques are declared to be bills of exchange.]

**Appendix C.****s. 4.****Nos. 5—7.**

Indorsee  
against  
acceptor and  
drawer of a  
bill of ex-  
change  
severally.

The plaintiff's claim is against the defendant *A. B.* as acceptor, and against the defendant *C. D.* as drawer, of a bill of exchange for £500, dated 1st January, 1882, payable three months after date, and indorsed by the defendant, *C. D.*, to the plaintiff, of the dishonour of which on presentation the defendant *C. D.* had notice.

Particulars :—

Principal .....	£
Interest .....	500
	20
Amount due .....	<u>£520</u>

Place of trial, City of Bristol.

(Signed)  
Delivered

[NOTE.—See note to Form No. 4.]

**No. 6.**

Payee against  
drawer of  
a bill of  
exchange  
excusing  
notice of  
dishonour.

The plaintiff's claim is against the defendant as drawer of a bill of exchange for £600, dated 1st March, 1882, drawn upon *A. B.*, payable to plaintiff three months after date, which was duly presented for payment and dishonoured, but *A. B.* had no effects of the defendant, nor was there any consideration for the payment of the said bill by the said *A. B.*

Particulars (as in Form 4).

Place of trial

(Signed)  
Delivered

[NOTE.—See note to Form No. 4. As to excuses for omitting to give notice of dishonour, see s. 50 of the Bills of Exchange Act, 1882.]

**No. 7.**

Obligee  
against  
obligor of a  
money bond.

The plaintiff's claim is for principal and interest due upon the defendant's bond to the plaintiff, dated 1st January, 1873, conditioned for payment of £100 on the 26th December, 1873.

Particulars :—

Principal .....	£
Interest .....	50
	2
Amount due .....	<u>£52</u>

Place of trial, Surrey.

(Signed)  
Delivered



No. 8.

Appendix C.  
s. 4.  
Nos. 8—10.

The plaintiff's claim is for principal and interest due under a covenant in a deed dated the 1st of January, 1882.

Particulars:—

Principal .....	£
Paid .....	100
	20
Principal due .....	80
Interest .....	3
Amount due .....	£83

Covenantee  
against cove-  
nantor on a  
covenant to  
pay money.

Place of trial, London.

(Signed)  
Delivered

No. 9.

The plaintiff's claim is for money in which the defendant, as a member of the Company, is indebted to the plaintiffs (being a company incorporated under the Companies Act, 1862) for allotment money of per share on shares in the Company allotted to the defendant, as such member, at his request, and for calls of £ each upon shares in the Company of which the defendant is a holder, whereby an action has accrued to the plaintiffs.

Against share-  
holder for al-  
lotment money  
and calls by a  
company  
under 25 & 26  
Vict. c. 89.

Particulars:—

18 .—Allotment of	shares to the defendant at	£
£	per share .....	
18 .—(1st) call at £	per share .....	
(2nd) call at £	per share .....	
Amount due .....		—

Place of trial,

(Signed)  
Delivered

No. 10.

The plaintiff's claim is for the price of goods sold and delivered by the plaintiff to E. F. under the following guarantee:—

On a guarantee  
for the price  
of goods set-  
ting out the  
guarantee.

SIR, 2nd February, 1882.

In consideration of your supplying goods to E. F., I undertake to see you paid.

Yours, &c.,  
C. D. (defendant).

To Mr. A. B. (plaintiff).

Particulars:—

1882.	£	s.	d.
25th March, 55 tons of coal at 20s. ....	55	0	0
Amount due .....	£55	0	0

Place of trial,

(Signed)  
Delivered

Appendix C.  
ss. 4, 5.  
Nos. 11—13.

Creditor  
against prin-  
cipal debtor  
and his surety  
severally on  
a guarantee  
for goods sold.

No. 11.

The plaintiff's claim is against the defendant *A. B.* as principal, and against the defendant *C. D.* as surety, for the price of goods sold and delivered by the plaintiff to *A. B.* on the guarantee by *C. D.*, dated the 2nd of February, 1882.

Particulars :—

	£	s.	d.
2nd February—Goods .....	47	15	0
3rd March—Goods .....	105	14	0
17th March—Goods .....	14	12	0
5th April—Goods .....	34	0	0
Amount due .....	£202	1	0

Place of trial, Surrey.

(Signed)  
Delivered

No. 12.

Debt upon a  
trust.

The plaintiff's claim is against the defendants as trustees under the settlement upon the marriage of *A. B.* and *X. Y.*, dated January 1st, 1870, whereby £10,000 invested on mortgage of land at *Z.* was vested in the defendants as trustees upon trust to pay the income thereof half-yearly to the plaintiff.

Particulars :—

1882, December 25th, half a year's income .....	£	200
---	---	-----

Landlord  
against tenant  
whose term has  
expired or has  
been deter-  
mined by  
notice to quit.

No. 13.

See Sect. VII., Form No. 1.

[NOTE.—For this Form, see *post*, p. 572.]

SECTION V.

No. 1.

ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY ARISING OUT OF CONTRACT (a).

No. 1.

Buyer against  
seller of goods  
for not deliver-  
ing.

1. The plaintiff has suffered damage by breach of contract for sale and delivery by the defendant to the plaintiff of 100 tons of Scotch pig iron at 5*l.* per ton to be delivered on rail at Middlesborough on the 15th of March, 1882.
2. The defendant did not deliver any (or                    tons, as the case may be) of the said iron.

Particulars of damage :—

Loss of profit at 1 <i>l.</i> per ton on 100 tons .....	£	100
The plaintiff claims 100 <i>l.</i>		

Place of trial, London.

(Signed)  
Delivered

(a) These forms apply to all Divisions.

No. 2.

Appendix C.

s. 5.

Nos. 2—4.

1. The plaintiff has suffered damage by breach of a contract between the plaintiff and the defendant for sale and delivery of 100 sacks of flour known as seconds at 35s. per sack.

Buyer against seller of goods for delivering them inferior to contract.

2. 80 sacks delivered were inferior to seconds, and 20 sacks were not delivered.

Particulars of damage:—

	£
80 sacks at 4s. ....	16
20 sacks at 5s. ....	5
	<u>£21</u>

The plaintiff claims 21l.

Place of trial, Surrey.

(Signed)  
Delivered

No. 3.

1. The plaintiff has suffered damage by breach of a charter-party dated the 10th of March, 1882, between the plaintiff and the defendant of the ship "Mary."

Shipowner against charterer for detention beyond the demurrage days.

2. The ship was detained at the port of loading.

Particulars of damage:—

1882 Jan. 1 } 10 days' detention beyond the demurrage days at	£
to } 25l. per day	
Jan. 10 } 25l. per day .....	250

The plaintiff claims 250l.

Place of trial, London.

(Signed)  
Delivered

No. 4.

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff on board the "Jane," signed by defendant, dated the 1st of January, 1882.

Shipper against master on a bill of lading for damage to goods.

2. 50 bales of cotton were delivered in a damaged condition.

Particulars of damage:—

50 bales at 2l. ....	£ 100
----------------------	-------

The plaintiff claims 100l.

Place of trial, city of Bristol.

(Signed)  
Delivered



**Appendix C.****S. 5.****Nos. 5—7.**

Shipper  
against ship-  
owner on a bill  
of lading for  
damage and  
short delivery.

**No. 5.**

1. The plaintiff has suffered damage by breach of contract by bill of lading of goods shipped by the plaintiff signed by the master of the ship "Mary" as the defendant's agent, dated the 1st of January, 1882.

2. 50 quarters of wheat were delivered in a damaged condition, and 100 quarters were not delivered.

Particulars of damage :—

	£
100 quarters at 40s. ....	200
50 quarters at 4s. ....	10
	<u>£210</u>

The plaintiff claims 210*l*.

Place of trial, Lancashire, West Derby Division.

(Signed)  
Delivered

**No. 6.**

On a marine  
policy against  
underwriter.

The plaintiff was interested to the amount of £                      under a marine policy of insurance for that amount, dated the                      day of                      , 18                      , on the ship "Hero," subscribed by the defendant for £                      .

Particulars :—

1. Valued or open :—Valued at 20,000*l*.
2. Voyage :—At and from Cardiff to Valparaiso.
3. (Or, Time :—From noon of 1st January, 1882, to noon of 1st January, 1883.)
4. Premium to defendant :—£                      per cent.
5. Perils insured against causing loss :—Of the seas.
6. Loss :—Total (or exceeding 3 per cent.).

The plaintiff claims £                      .

Place of trial, Bristol.

(Signed)  
Delivered

**No. 7.**

Passenger  
against rail-  
way company  
for negligence.

The plaintiff has suffered damage from the defendants' negligence in carrying the plaintiff as a passenger by railway from London to Brighton, causing personal injuries to the plaintiff, in a collision near Hayward's Heath on the 15th January, 1882.

Particulars of expenses, &c. :—

	£	s.	d.
Loss of fifteen weeks' salary as clerk at 2 <i>l</i> . per week	30	0	0
Dr. Smith .....	10	10	0
Nurse for 6 weeks .....	3	0	0
	<u>£43</u>	<u>10</u>	<u>0</u>

The plaintiff claims £500.

Place of trial, Sussex.

(Signed)  
Delivered

No. 8.

Appendix C.

ss. 5, 6.

Nos. 8—10.

1. The plaintiff has suffered damage from the defendants' negligence in his conduct for the plaintiff, as his solicitor, of business undertaken by the defendant on the plaintiff's retainer.

2. The negligence was in making an application under Order XIV., Rule I., in the case of *A. B.* (the plaintiff) *v. C. D.*, where the case was one of unliquidated damages and not of debt.

Client against solicitor for negligence.

Particulars of damage:—

Taxed costs paid to defendant on dismissal of summons, £

The plaintiff claims £

Place of trial,

(Signed)

Delivered

No. 9.

1. By a repairing covenant contained in a lease under seal from the plaintiff to the defendant, dated the 1st of January, 1876, of a house No. 401, Piccadilly, for seven years from the 25th day of December, 1875, the defendant covenanted to keep the premises in such repair and condition as therein mentioned.

Landlord against tenant for breach of covenant to repair.

2. The premises were during the term out of such repair as was required by the covenant.

3. They were yielded up out of such repair at the expiration of the term.

4. Particulars of dilapidations were delivered to the defendant's solicitor on the day of , 18 , and exceed three folios.

The plaintiff claims £

Place of trial,

(Signed)

Delivered

No. 10.

1. The plaintiff has suffered damage by breach of promise by the defendant to marry her on the of [or, within a reasonable time, which elapsed before action] [or, on the death of *A. B.*, which happened before action].

Breach of promise of marriage.

2. The defendant refused to marry the plaintiff on the of [or, within a reasonable time] [or, on the death of *A. B.*].

Particulars of special damage.

[As the case may be, if any.]

The plaintiff claims £

Place of trial,

(Signed)

Delivered

SECTION VI.

ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS OF RIGHT FOUNDED ON WRONGS (a).

No. 1.

No. 1.

The plaintiff has suffered damage by the defendant wrongfully depriving the plaintiff of two casks of oil by refusing to give them up on demand [or throwing them overboard out of a boat in the London Docks, &c.]

Conversion of goods.

(a) These forms apply to actions in any Division, and whether the substantive claim is for injunction, damages, or both.

**Appendix C.****s. 6.****Nos. 1—4.***[If any special damage is claimed, add]—*Particulars *[fill them in]*.

The plaintiff claims £100.

Place of trial, London.

(Signed)  
Delivered**No. 2.**

Detinue.

The defendant detained from the plaintiff the plaintiff's goods and chattels, that is to say, a horse, harness, and gig.

The plaintiff claims a return of the said goods and chattels or their value, and £10 for their detention.

Place of trial, Lincolnshire.

(Signed)  
Delivered**No. 3.**Negligent  
driving.

The plaintiff has suffered damage from personal injuries to the plaintiff and damages to his carriage, caused by the defendant or his servant on the 15th of January, 1882, negligently driving a cart and horse in Fleet Street.

Particulars of expenses, &amp;c. :—

	£	s.	d.
Charges of Mr. Smith, surgeon .....	10	10	0
Charges of Mr. Jones, coachmaker .....	14	5	6
	£24	15	6

The plaintiff claims £150.

Place of trial, London.

(Signed)  
Delivered**No. 4.**Lord Camp-  
bell's Act.\* *[Sic.*  
? widow.]The plaintiff, as executor of *C. D.*, deceased, brings this action for the benefit of Eva the wife,\* and William and Margaret and Dorothea, the children of *C. D.* *[as the case may be]*, who have suffered damage from the defendant's negligence, in carrying the said *C. D.* by omnibus, whereby the said *C. D.* was killed in Cornhill on the 15th of January, 1882.

Particulars pursuant to Statute are delivered herewith.

The plaintiff claims £500.

Place of trial, London.

(Signed)  
Delivered



No. 5.

Appendix C.

s. 6.

Nos. 5—8.

The plaintiff has suffered damage from injuries to his ship, the "Betsy," and the cargo on board thereof, by a collision with the ship, the "Jane," caused by the negligent navigation thereof by the defendant or his servants on the River Thames on the 1st of February, 1883.

Collision of ships.

Particulars of loss and expenses:—

1. Charges of Jones & Co., shipwrights, £450 2s.
2. Loss of use of ship from 1st of February, 1883, to 1st of March, 1883, £280.

Particulars of damage to cargo:—

[Insert them].

The plaintiff claims £

Place of trial, London.

(Signed)  
Delivered

No. 6.

The defendant has infringed the plaintiff's patent, No. 14,084, granted for the term of fourteen years, from the 21st of May, 1880, for certain improvements in the manufacture of iron and steel, whereof the plaintiff was the first inventor.

Injunction, &c., for infringement of patent.

The plaintiff claims an injunction to restrain the defendant from further infringement and £100 damages.

Particulars of breaches are delivered herewith.

Place of trial, Durham.

(Signed)  
Delivered

No. 7.

The defendant has infringed the plaintiff's copyright in a book entitled "The History of Rome," registered on the day of .

Damages for infringement of copyright.

Particulars of special damage are as follows:—

	£
Loss of sale of 50 copies .....	50
Loss of profit in the copyright .....	50
	<u>£100</u>

The plaintiff claims 100l.

Place of trial, Surrey.

(Signed)  
Delivered

No. 8.

1. The defendant has infringed the plaintiff's trade mark.

2. The trade mark is [describe it].

[If the plaintiff is not the original proprietor of the trade mark, show shortly how his title is derived.]

3. The following are the acts complained of, viz.:—

[Set them out.]

The plaintiff claims an injunction to restrain the defendant, his servants, and

Injunction, &c., for infringement of trade mark.

## FORMS—STATEMENTS OF CLAIM.

**Appendix C.** agents from infringing the plaintiff's said trade mark, and in particular from  
**s. 6.** [*stating any particular injunction sought*].

**Nos. 8—11.** The plaintiff also claims an account or damages.

(Signed)  
 Delivered

**No. 9.**

Seduction.

The plaintiff has suffered damage from the seduction and carnally knowing by the defendant of *G. H.* the [daughter and] servant of the plaintiff.

Particulars of special damage are as follows :—

	£	s.	d.
Loss of service from the 1st of March to the 30th of November, 1882 .....	100	0	0
Nursing and medical attendance .....	10	10	0
	<u>£110</u>	<u>10</u>	<u>0</u>

The plaintiff claims 500*l.*

Place of trial, Berkshire.

(Signed)  
 Delivered

**No. 10.**

Obstruction of  
 lights.

1. The plaintiff is the owner [*or lessee*] and occupier of a house 700, Regent Street, in which are the following ancient lights :—

- (1.) The kitchen window in the basement on the south side.
- (2.) The two back dining-room windows on the ground floor on the south side.
- (3.) The landing window and back drawing-room window on the south side.

2. The defendant is erecting a building which will, if not stopped, materially diminish the light coming through the said windows.

The plaintiff claims an injunction to restrain the defendant, his contractors, servants and workmen, from continuing the erection of the building, so as to obstruct or diminish the access of light to the said windows or any of them.

The plaintiff will also, if necessary, claim to have the said building pulled down, or damages for the injury he will sustain if the same is completed and not pulled down.

(Signed)  
 Delivered

**No. 11.**

Nuisance by  
 smells.

The plaintiff has suffered damage from offensive and pestilential smells and vapours caused by the defendant in the plaintiff's dwelling-house, No. 15, James Street, Durham.

The plaintiff claims :—

- (1.) £50.
- (2.) An injunction to restrain the defendant from the continuance or repetition of the said injury, or the committal of any injury of a like kind in respect of the same property.

Place of trial, Yorkshire, West Riding.

(Signed)  
 Delivered

Appendix C.

s. 6.

Nos. 12—14.

No. 12.

1. The plaintiff is the owner [*or lessee*] and occupier of a farm known as \_\_\_\_\_, through which there runs a river known as \_\_\_\_\_.

2. The defendant, or persons in his employ, pollute the water in the said river by passing into the same the refuse of the defendant's dye works, situate higher up the said river.

The plaintiff claims an injunction to restrain the defendant, his servants and agents, from sending from the said dye works into the said river any matter so as to pollute the waters thereof, or to render them unwholesome or unfit for use, to the injury of the plaintiff [*or as the case may be*].

The plaintiff will also claim damages in respect of the said nuisance.

Place of trial \_\_\_\_\_

Nuisance by  
pollution of  
water.

(Signed)  
Delivered

No. 13.

1. On 31st January, 1883, the defendant issued a prospectus to the public relating to the *A. B. Company, Limited*.

Fraudulent  
prospectus.

2. On Feb. 1st, 1883, the plaintiff received a copy of this prospectus.

3. The plaintiff subscribed for 100 shares in the company on the faith of this prospectus.

4. The prospectus contained misrepresentations, of which the following are particulars:—

(a.) The prospectus stated “ . . . whereas in fact . . . ”

(b.) The prospectus stated “ . . . whereas in fact . . . ”

(c.) The prospectus stated “ . . . whereas in fact . . . ”

5. The defendant knew of the real facts as to the above particulars.

6. The following facts, which were within the knowledge of the defendants, are material, and were not stated in the prospectus:—

(a.)

(b.)

7. The plaintiff has paid calls to the company to the extent of £1,000. The plaintiff claims—

1. Repayment of £1,000 and interest.

2. Indemnity.

(Signed)  
Delivered

No. 14.

The plaintiff has suffered damage from the defendant inducing the plaintiff to buy the goodwill and lease of the “*George*” public-house, Stepney, by fraudulently representing to the plaintiff that the takings of the said public-house were £10 a week, whereas in fact they were much less, to the defendant's knowledge.

Fraudulent  
sale of a lease.

Particulars of special damage:—

(*Fill them in.*)

The plaintiff claims £ \_\_\_\_\_

(Signed)  
Delivered



## Appendix C.

ss. 6, 7.

No. 15.

Malicious  
prosecution.

## No. 15.

The defendant maliciously and without reasonable and probable cause preferred a charge of larceny against the plaintiff before a justice of the peace, causing the plaintiff to be sent for trial on the charge and imprisoned thereon, and prosecuted the plaintiff thereon at the Middlesex Quarter Sessions, where the plaintiff was acquitted.

Particulars of special damage :—

Messrs. L. and L.'s bill of costs, £65.

Loss in business from January 1, 1883, to February 18, 1883, £100.

The plaintiff claims £500.

Place of trial, .

(Signed)  
Delivered

## SECTION VII.

Nos. 1, 2.

ACTIONS FOR RECOVERY OF LAND, ETC.

## No. 1.

Landlord  
against tenant  
whose term has  
expired, &c.

1. The plaintiff is entitled to the possession of a farm and premises called Church Farm in the parish of St. James, in the county of Surrey, which was let by the plaintiff to the defendant for the term of three years from the 29th of September, 1879, which term has expired [or as tenant from year to year from the 29th September, 1875, which said tenancy was duly determined by notice to quit expiring on the 29th of September, 1881].

The plaintiff claims possession and £50 for mesne profits.

Place of trial, Surrey.

(Signed)  
Delivered

[NOTE.—This is the form of special indorsement to be used under O. III., r. 6, when summary judgment under O. XIV. is sought: see form No. 13 of Sect. IV., *ante*, p. 564, and note on p. 560.]

## No. 2.

Heir-at-law  
against  
stranger.

1. The plaintiff is entitled to the possession of Blackacre in the parish of [or, of No. 2, Bridge Street, Bristol] in the county of .
2. On and before the of , 188 , *A. B.* was seised in fee and in possession of the premises .
3. On the of , 188 , the said *A. B.* died so seised, whereupon—
4. The estate descended to the plaintiff, his eldest son and heir-at-law.
5. After the death of the said *A. B.* the defendant wrongfully took possession of the premises.

The plaintiff claims :—

1. Possession of the premises.

2. Mesne profits from the of .

Place of trial,

(Signed)  
Delivered

[NOTE.—From this form it would seem that in pedigree cases the pedigree must be set out in the statement of claim. Compare under former rules, *Philipps v. Philipps*, 4 Q. B. D. 127, with *Evelyn v. Evelyn*, 28 W. R. 531, which appear to be inconsistent. See also *Davis v. James*, 26 Ch. D. 778.]

APPENDIX D.

Appendix D.  
ss. 1, 2.

FORMS OF DEFENCE TO BE USED PURSUANT TO ORDER XIX.,  
RULE 5.

[As to the rules of pleading specially applicable to defences and counter-claims, see O. XXI., *ante*, p. 217. As to pleading generally, see O. XIX., *ante*, p. 202.]

SECTION I.

GENERAL FORM.

18 , No. .

In the High Court of Justice,  
Division.

Between and , Plaintiff,  
Defence. , Defendant.

The defendant says that :—

1. }
2. } (*To be filled up in the manner exemplified in the following forms.*)
3. }

(Signed)  
Delivered

Counter-claim.

The defendant says that :—

1. }
2. } (*To be filled up in the manner exemplified in the following forms.*)

The defendant counter-claims.

(Signed)  
Delivered

Defence and Counter-claim.

Defence.

The defendant says :—

1. }
2. } (*To be filled up.*)

Counter-claim.

The defendant repeats paragraph 2 of his defence and says that :—

3. }
4. } (*To be filled up.*)

The defendant counter-claims.

(Signed)  
Delivered

SECTION II.

TO ACTIONS SPECIALLY ASSIGNED TO THE CHANCERY DIVISION BY SECTION 34 OF THE  
PRINCIPAL ACT. APPENDIX C, SECTION II.

1. The defendants do not admit the plaintiff's claim.

The defendant *A. B.* admits the plaintiff's claim, but not assets.

The defendant *C. D.* admits assets, but not the plaintiff's claim.

To actions for  
administration.

## Appendix D.

s. 2.

Nos. 1, 2.

2. The claim is barred by the Statute of Limitations.  
[State which.]
3. Payment was made by deceased.
4. The claim is fraudulent in the following particulars :—  
[Set out particulars.]
5. The defendant is entitled to a set-off, of which the following are the particulars :—  
[Set out particulars.]
6. The claim was released by deed dated the            day of            .
7. Notice was given and assets distributed under Statute 22 & 23 Vict. c. 35, s. 29.

## Particulars of the Notice.

Advertisements in the *Times* of January 1, 1880.,,            *New York Herald*, February, 1881.,,            *Bombay Gazette* of January 25, 1881.

[giving the titles of the newspapers and the dates of those in which the advertisement appeared.]

8. The personal estate of the testator is sufficient to pay the plaintiff his debt if established.
9. The defendant is not heir-at-law or devisee of the deceased.

(Signed)  
Delivered

## No. 1.

To actions for  
foreclosure by  
mortgagee.

1. The defendant did not execute the mortgage.
2. The mortgage was not assigned to the plaintiff (*if more than one assignment is alleged say which is denied*).
3. The debt is barred by the Statute of Limitations.
4. Payments have been made, viz. :—  
10 July, 1874, £1,000.  
18 October, 1875, £500.
5. The plaintiff took possession on the            of            , and has received the rents ever since.
6. The plaintiff released the debt by deed, dated 1 June, 1882.
7. The defendant conveyed all his interest to *A. B.* by deed, dated 25 November, 1880.

The defendant claims :

1. Account.
2. Re-conveyance.

(Signed)  
Delivered

## No. 2.

To same by  
alleged second  
incumbrancer  
who claims  
priority.

1. }
2. }
3. }
4. } (*As in preceding Form.*)
5. }
6. }

7. By a deed dated 1st June, 1880, the mortgagor, *A. B.*, mortgaged the



property in question to the defendant to secure £5,000 and interest at 5 per cent. per annum.

Appendix D.

s. 2.  
No. 2.

The defendant claims :

1. A declaration of priority and foreclosure (and a receiver).

(Signed)  
Delivered

*[If the plaintiff claims payment of the mortgage debt, the defendant must, if he disputes his liability, show the grounds on which he does so as in other cases of debt ; or he can claim indemnity against the owner of the Equity of Redemption under Order XVI., Rule 48.]*

1. The plaintiff's right to redeem is barred by the Statute of Limitations.—*To actions for redemption.*  
*[State which.]*

2. The plaintiff assigned all interest in the property to *A. B.*

3. The defendant by deed, dated the                      day of                      , assigned all his interest in the mortgage debt and property comprised in the mortgage to *A. B.*

4. The defendant never took possession of the mortgaged property, or received the rents thereof.

*[If the defendant admits possession for a time only, he should state the time, and deny possession beyond what he admits.]*

(Signed)  
Delivered

1. The defendant did not enter into the agreement.

2. *A. B.* was not the agent of the defendant (*if alleged by plaintiff*).

3. The plaintiff has not performed the following conditions.—(*Conditions*.)

4. The defendants did not.—(*Alleged acts of part performance.*)

5. The plaintiff's title to the property agreed to be sold is not such as the defendant is bound to accept by reason of the following matters ;—(*State why.*)

6. The Statute of Frauds has not been complied with.

7. The agreement is uncertain in the following respects.—(*State them.*)

8. [*or*] The plaintiff (*a*) has been guilty of delay ;

9. [*or*] The plaintiff (*a*) has been guilty of fraud [*or* misrepresentation] ;

10. [*or*] The agreement is unfair ;

11. [*or*] The agreement was entered into by mistake.

The following are particulars of (8), (9), (10), (11), [*or as the case may be*].

12. The agreement was rescinded under Conditions of Sale, No. 11. (*or, by mutual agreement*).

(Signed)  
Delivered

*[In cases where damages are claimed and the defendant disputes his liability to damages, he must deny the agreement or the alleged breaches, or show whatever other ground of defence he intends to rely on, e. g., Statute of Limitations, accord and satisfaction, release, fraud, &c.]*

(*a*) By a printer's error the word "defendant" is by mistake inserted in the official copy instead of "plaintiff."

## Appendix D.

s. 3.

Nos. 1—4.

## SECTION III.

FORMS TO BE USED IN ACTIONS WITHIN THE EXCLUSIVE COGNIZANCE OF THE  
PROBATE DIVORCE AND ADMIRALTY DIVISION: APPENDIX C., SECTION III.

## No. 1.

Interest suit.

The defendant is nephew and next of kin of the deceased, being son of *G.B.*, the brother of the deceased, who died in his lifetime.

The defendant claims :—

That the Court pronounce that the defendant is the nephew and next of kin of the deceased, and entitled to a grant of letters of administration of the personal estate and effects of the deceased.

(Signed)  
Delivered

---

## No. 2.

Probate of  
will in solemn  
form.

1. The said will and codicil of the deceased were not duly executed according to the provisions of the statute 1 Vict. c. 26.

2. The deceased at the time the said will and codicil respectively purport to have been executed, was not of sound mind, memory, and understanding.

3. The execution of the said will and codicil was obtained by the undue influence of the plaintiff [and others acting with him, whose names are at present unknown to the defendant].

4. The execution of the said will and codicil was obtained by the fraud of the plaintiff, such fraud, so far as is within the defendant's present knowledge being [*state the nature of the fraud*].

5. The deceased at the time of the execution of the said will and codicil did not know and approve of the contents thereof, [*or*] of the contents of the residuary clause in the said will [*as the case may be*].

6. The deceased made his true last will, dated the 1st day of January, 1873, and thereby appointed the defendant sole executor thereof.

The defendant claims :—

1. That the Court will pronounce against the said will and codicil propounded by the plaintiff :

2. That the Court will decree probate of the will of the deceased, dated the 1st of January, 1873, in solemn form of law.

(Signed)  
Delivered

---

## No. 3.

Bottomry.

That there was no necessity to make the said bond, nor were reasonable steps taken to give notice of the intended hypothecation to the owners of the "*Onward*," or the owners of the cargo.

(Signed)  
Delivered

---

## No. 4.

Equipment  
and neces-  
saries.

1. The equipment and repairs supplied and done were not necessities, and the claim is not a claim for necessities within s. 5 of the Admiralty Court Act, 1861.

2. The alleged necessities were not supplied on the credit of the said vessel but upon the personal credit of *J.B.*, who was the broker for the vessel, and upon the agreement that the plaintiffs were not to have recourse to the vessel.

(Signed)  
Delivered

No. 5.

1. The defendant did not withhold possession.
2. The defendant withheld possession on the following grounds :

[State them.]

(Signed)

Delivered

Appendix D.

ss. 3, 4.

Nos. 5, 6.

Possession.

No. 6.

1. The alleged services did not amount to salvage.
2. The defendant made tender of and has paid into Court 350*l*.

(Signed)

Delivered

Salvage.

SECTION IV.

TO ACTIONS INCLUDED IN ORDER III., RULE 6, CLASSES A., B., C., D., E.,  
AND F.

1. The defendant did not accept the bill.
2. The defendant did not make the note.
3. The defendant did not draw the cheque.
4. The defendant did not indorse to *A.B.*
5. The defendant [*or A.B.*] did not indorse to the plaintiff.
6. The bill was not presented for payment.
7. The defendant had not due notice of dishonour.
8. The plaintiff was not the holder at the commencement of the action.
9. The bill was accepted [*or, the note was made*] for the accommodation of the defendant without consideration.
10. The bill was accepted for the accommodation of the drawer and indorsed to the plaintiff without consideration.

To actions  
on bills of  
exchange,  
promissory  
notes, or  
cheques.

11. The bill was accepted and delivered to the drawer without consideration for the purpose of his getting it discounted for the defendant, and the drawer, in fraud of the defendant, and contrary to the said purpose, indorsed the bill to the plaintiff without consideration [*or, with notice of the said fraud, or, overdue*].

12. The defendant was induced to accept by the fraud of the drawer, who indorsed to the plaintiff without consideration [*or with notice of the fraud, or overdue*].

Particulars of the fraud are as follows:—The drawer on or about the 15th of May, 1882, falsely and fraudulently stated to the defendant that he had shipped 20 tons of pig iron for the defendant on board the "*Ajax*," which he had not done.

13. The defendant accepted the bill [*or made the note*] for and on account of the price of 50 tons of coal to be delivered by the plaintiff to the defendant by the 1st of May, 1882, and the plaintiff failed to deliver the goods.

14. The bill [*or note, or cheque*] was rendered void after issue by a material alteration, viz., by the alteration of the date from the 21st of January to the 2nd of January.

(Signed)

Delivered





3. The plaintiff became bankrupt before action, and the cause of action vested in the trustees of his property. **Appendix D.**  
**ss. 4, 5.**

4. The defendant was discharged under a liquidation by arrangement pursuant to the 125th section of the Bankruptcy Act, 1869.

5. The defendant compounded with his creditors under the 126th section of the Bankruptcy Act, 1869, and duly paid to the plaintiff the composition on the day appointed.

6. The defendant was covert at the time of making the alleged contract [*or* Coverture. contracting the alleged debt].

7. The defendant was an infant at the time of making the alleged contract [*or* Infancy. contracting the alleged debt].

8. The defendant as to the whole action [*or* as to of £ , parcel of the Payment into money claimed, *or* as to the plaintiff's claim on the guarantee of the of Court. , 18 , *or as the case may be*], has paid into Court £ , and says that sum is enough to satisfy the plaintiff's claim [*or* the plaintiff's claim herein pleaded to].

9. The causes of action were released by deed dated the 1st of May, 1882, Release. between the plaintiff of the first part and the defendant of the second part.

10. The contract was rescinded [*or* the defendant was exonerated by the Rescission plaintiff] before breach. Particulars are as follows:—An arrangement between before breach. the plaintiff and the defendant, made verbally on the 15th of April, 1882 [*or* by letter from the defendant to the plaintiff, and answer of the plaintiff dated the 14th and 15th of April, 1882].

11. The debt was barred by the Statute of Limitations [*state which*].

12. (17th) section of the Statute of Frauds has not been complied with.

(Signed)  
Delivered

Statute of  
Limitations.  
Statute of  
Frauds.

## SECTION V.

### TO ACTIONS FOR DAMAGES FOR BREACH OF CONTRACT OR DUTY.

#### APPENDIX C, SECT. V.

1. The defendant did not contract [*or* promise, *or* agree] as alleged. Denials.

2. The defendant did not receive the goods for the alleged purpose [*or* on the alleged terms].

3. The defendant did not receive the plaintiff as a passenger to be carried as alleged.

4. The defendant did not [*insert breaches denied*].

5. The defendant was not ready and willing to accept and pay for the goods [*or* to deliver the goods, *or as the case may be*].

6. There was contributory negligence on part of the plaintiff.

7. The plaintiff did not pay or tender the money for the carriage.

Contributory  
negligence.  
Carriers.

8. The damage or loss occurred from the inherent vice [*or* bad condition when received] of the goods [*or* horse, *or as the case may be*].

9. The loss occurred by reason of the excepted perils mentioned in the charter-party [*or* bill of lading], that is to say, the perils of the seas [*or* fire, *or as the case may be*].

10. The goods were above the value of £10, and consisted of articles mentioned in the first section of the Land Carriers Act (11 Geo. IV. & 1 Will. IV. c. 68), that is to say, silks [*or as the case may be*], and their value and nature was not declared or any increased charge paid, &c.

11. The charter-party was cancelled pursuant to cancelling clause therein, the Charter-parties. ships not having arrived at port of loading on or before 1st May, 1882.

Appendix D.  
ss. 5, 6.

Insurance.

Breach of promise.

12. The alleged liability of the defendant had ceased by reason of cesser clause in the charter-party, the cargo shipped having been worth more at the port of discharge than the freight or demurrage.

13. The loss was not by the perils insured against.

14. The plaintiff was not interested in the subject-matter of the insurance.

15. The ship was not seaworthy at commencement of risk [*or voyage*].

16. The plaintiff was not ready and willing to marry the defendant.

(Signed)  
Delivered

SECTION VI.

TO ACTIONS CLAIMING INJUNCTIONS, DAMAGES, OR DECLARATIONS OF RIGHT,  
FOUNDED UPON WRONGS.

APPENDIX C, SECT. VI.

To all actions for wrongs.

1. Denial of the several acts [*or matters*] complained of.

(Signed)  
Delivered

To actions for detention or conversion of chattels.

1. The goods [*or chattels, or as the case may be*] were not the plaintiff's.

2. The goods were detained for a lien to which the defendant was entitled.

Particulars are as follows:—

1882, May 3. To carriage of the goods claimed from London to Birmingham:—

45 tons at 2s. .... £ s. d.  
4 10 0

(Signed)  
Delivered

To actions for personal bodily injuries or injuries to carriages, goods, or animals by trespass or negligence.

To actions for infringement of a patent.

1. The defendant did the acts complained of in necessary self-defence.

2. There was contributory negligence on the part of the plaintiff [*or the plaintiff's servant*].

(Signed)  
Delivered

1. The defendant did not infringe the patent.

2. The invention was not new.

3. The plaintiff was not the first or true inventor.

4. The invention was not useful.

5. [*Denial of any other matter of fact affecting the validity of the patent*].

6. The patent was not assigned to the plaintiff.

(Signed)  
Delivered

Copyright.

(1.) The plaintiff is not the author [*assignee, &c., as the case may be*].

(2.) The book was not registered.

(3.) The defendant did not infringe.

(Signed)  
Delivered



- (1.) The trade mark is not the plaintiff's.
- (2.) The alleged trade mark is not a trade mark.
- (3.) The defendant did not infringe.

Appendix D.  
ss. 6—8.

Trade mark.

(Signed)  
Delivered

1. The plaintiff's lights are not ancient [*or deny his other alleged prescriptive rights*].
2. The plaintiff's lights will not be materially interfered with by the defendant's buildings.
3. The defendant denies that he or his servants pollute the water [*or do what is complained of*]. Nuisance.  
[*If the defendant claims the right by prescription or otherwise to do what is complained of, he must say so, and must state the grounds of his claim, i.e., whether by prescription, grant, or what.*]
4. The plaintiff has been guilty of laches, of which the following are particulars:—  
1870. Plaintiff's mill began to work.  
1871. Plaintiff came into possession.  
1883. First complaint.

5. As to the plaintiff's claim for damages, the defendant will rely on the above grounds of defence, and says that the acts complained of have not produced any damage to the plaintiff. [*If other grounds are relied on, they must be stated, e.g., the Statute of Limitations as to past damage.*]

(Signed)  
Delivered

1. The said *A. B.* was not the servant of the plaintiff.
2. The defendant did not seduce and carnally know the said *A. B.*

To actions for seduction.

(Signed)  
Delivered

## SECTION VII.

TO ACTIONS FOR RECOVERY OF LAND. APPENDIX C, SECT. VII.

1. The defendant is in possession of the premises by himself or his tenant. [As to this defence, see O. XXI., r. 21.]
2. The defendant had no notice to quit.

(Signed)  
Delivered

## SECTION VIII.

COUNTER-CLAIMS.

The defendant lent £500 to the plaintiff on 1st May, 1882.

The defendant counter-claims £500.

1. The defendant has suffered damage by the plaintiff's breach of a contract for the sale and delivery by the plaintiff to the defendant of 5,000 tons of Merthyr steam coal at 18s. 6d. per ton f.o.b. at Cardiff by equal monthly deliveries over the first five months of 1882.

2. The April and May instalments were not delivered.

Particulars of the damages:—

Difference between market price in April and May, and the contract price, 2s. 6d. per ton on 2,000 tons.....	£250 0 0
--	----------

The defendant counter-claims £250.

(Signed)  
Delivered

**Appendix E.**  
ss. 1, 2.

## APPENDIX E.

### FORMS OF REPLY, &c., TO BE USED PURSUANT TO ORDER XIX., RULE 5.

#### SECTION I.

18 . [*Here put the letter and number.*]

General form. In the High Court of Justice.  
Division.

Between Plaintiff,  
and  
Defendant.

Reply.

The plaintiff as to the defence says that :—

- 1.
- 2.

The plaintiff as to the counter-claim says that :—

- 1.
- 2.

(Signed)  
Delivered

Reply.

The plaintiff as to the defence says that :—

1. He joins issue.
2. The agreement giving time to the principal expressly reserved remedies against the surety.

The plaintiff as to the counter-claim says that—

1. The defendant was not ready and willing to accept and pay for the goods.

(Signed)  
Delivered

To actions on a guarantee to which defence raised of time given to the principal and counter-claim for non-delivery of goods.

#### SECTION II.

##### EXAMPLE OF A STATEMENT OF CLAIM, DEFENCE, AND REPLY.

18 . [*Here put the letter and number.*]

In the High Court of Justice,  
Queen's Bench Division.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

##### Statement of Claim.

The plaintiff's claim is for work done and materials provided by the plaintiff for the defendant at his request.

Particulars :—

1882. January 1 to 31 May. To rebuilding house at Wigan, as per contract dated the 24th December, 1881	£	s.	d.
To extras as per account delivered.....	3,400	0	0
	243	0	0
	3,643	0	0
Paid on account .....	3,000	0	0
Balance due .....	£643	0	0

Appendix E.  
s. 2.

The plaintiff also seeks to recover interest on the above balance from the 31st May, 1882, till payment or judgment.

Place of trial, Lancashire, Northern Division.

(Signed)

Delivered the 1st of January, 1883.

[Heading as in General Form.]

Defence and Counter-claim.

Defence.

The defendant says that—

1. Except as to 200*l.*, parcel of the money claimed, the architect did not grant his certificate pursuant to the contract.

2. As to 200*l.*, parcel of the money claimed, the defendant brings [or has brought] into Court 200*l.*, and says that sum is enough to satisfy the plaintiff's claim herein pleaded to.

Counter-claim.

The defendant says that—

1. The contract contained a clause whereby it was provided that the plaintiff should complete the works by the 31st of March, 1882, or in default pay to the defendant 1*l.* a day for every subsequent day during which the works should remain unfinished, and they so remained unfinished for 61 days to the 31st of May.

The defendant counter-claims 61*l.*

(Signed)

Delivered the 22nd of January, 1883.

[Heading as in General Form.]

Reply.

The plaintiff says that—

1. As to the first paragraph of the defence, he joins issue.

2. As to the second paragraph thereof, the plaintiff accepts the £ in satisfaction.

The plaintiff as to the counter-claim says that—

3. The liquidated damages were waived by ordering extras and material alterations in the works.

4. The defendant waived the liquidated damages by preventing the plaintiff from having access to the premises till a week after the agreed time.

(Signed)

Delivered the 5th of February, 1883.



Appendix E.  
s. 3,  
Nos. 1—3.

## SECTION III.

## DEFENCE INCLUDING AN OBJECTION IN POINT OF LAW.

[See O. XXV., *ante*, p. 232, abolishing demurrers, and substituting in lieu thereof the proceedings to which these Forms refer.]

## No. 1.

[Heading.]

Defence.

To action on  
a guarantee  
for the price  
of goods.

The defendant says that—

1. The goods were not supplied to *E. F.* on the guarantee.
2. The defendant will object that the guarantee discloses a past consideration on the face of it.

(Signed)

Delivered

## No. 2.

[Heading.]

Defence.

To action for  
verbal slander  
actionable  
only by reason  
of special  
damage.

The defendant says that—

1. The defendant did not speak or publish the words.
2. The words did not refer to the plaintiff.
3. The defendant will object that the special damage stated is not sufficient in point of law to sustain the action.

(Signed)

Delivered

## No. 3.

[Heading.]

Defence.

To action on  
a marine  
policy stated  
to contain  
clauses that  
the policy was  
to be proof  
of interest  
and without  
benefit of  
salvage.

The defendant says that—

1. The defendant did not make the policy.
2. The loss was not by the perils insured against.
3. The defendant will object that the policy was avoided by 19 Geo. II. c. 37, s. 1.

(Signed)

Delivered

## APPENDIX F.

Appendix F.  
Nos. 1—3.

[The forms in this Appendix are prescribed by O. XLI., r. 1, *ante*, p. 336. As to motion for judgment, see O. XL., *ante*, p. 332. As to entry of judgment, see O. XLI.]

### FORMS OF JUDGMENT.

#### No. 1.

18 . [*Here put the letter and number.*]

In the High Court of Justice.  
Division.

Between *A. B.*, Plaintiff,  
and  
*C. D.* and *E. F.*, Defendants.

Default of  
appearance  
and defence  
in case of  
liquidated  
demand.

30th November, 18 .

The defendants [*or the defendant C. D.*] not having appeared to the writ of summons herein [*or not having delivered any defence*], it is this day adjudged that the plaintiff recover against the said defendant £ , and costs, to be taxed.

[NOTE.—See O. XIII., r. 3, *ante*, p. 163 ; and O. XXVII., r. 2, *ante*, p. 238.]

#### No. 2.

[*Heading as in Form 1.*]

The day of 18 .

No appearance having been entered to the writ of summons *or* no defence having been delivered by the defendant herein,

It is this day adjudged that the plaintiff recover against the defendant the value of the goods [*or damages or both, as the case may be,*] to be assessed.

[NOTE.—See O. XIII., r. 5, *ante*, p. 164 ; and O. XXVII., r. 4, *ante*, p. 238.]

Interlocutory  
judgment in  
default of  
appearance  
or defence  
where demand  
unliquidated.

#### No. 3.

[*Heading as in Form 1.*]

30th November, 18 .

No appearance having been entered to the writ of summons herein, it is this day adjudged that the plaintiff recover possession of the land in the indorsement on the writ described as

[NOTE.—This form differs from the form previously in use, inasmuch as it requires that the land should be described in the judgment. The old form ran, “ . . . the land in the said writ mentioned.” This judgment carries no costs.]

Judgment in  
default of  
appearance  
in action for  
recovery of  
land.

Appendix F.  
Nos. 4—7.

## No. 4.

[Heading as in Form 1.]

Judgment in  
default of  
appearance  
and defence  
after assess-  
ment of  
damages.

30th November, 18 .

The defendants not having appeared to the writ of summons herein [*or not having delivered any defence*], and a writ of inquiry, dated 1876, having been issued directed to the sheriff of to assess the damages which the plaintiff was entitled to recover, and the said sheriff having by his return, dated the 18 , returned that the said damages have been assessed at £ , it is adjudged that the plaintiff recover £ and costs, to be taxed.

## No. 5.

[Heading as in Form 1.]

Judgment  
after appear-  
ance and order  
under Order  
XIV. r. 1.

The day of 18 .

The defendant having appeared to the writ of summons herein, and the plaintiff having by the order of , dated the day of 18 , obtained leave to sign judgment under the Rules of the Supreme Court, Order XIV., Rule 1, for [*recite order*],

It is this day adjudged that the plaintiff recover against the defendant £ [*or possession of the land in the indorsement on the writ described as*] and costs to be taxed.

The above costs have been taxed and allowed at £., as appears by a [*taxing officer's*] certificate dated the day of 18 .

## No. 6.

[Heading as in Form 1.]

Judgment at  
trial by judge  
without a  
jury.[*If in Chancery Division  
name of Judge.*]

This action coming on for trial [the day of and] this day, before in the presence of counsel for the plaintiff and the defendants [*or, if some of the defendants do not appear, for the plaintiff and the defendant C. D., no one appearing for the defendants E. F. and G. H., although they were duly served with notice of trial as by the affidavit of filed the day of appears*], upon hearing the probate of the will of , the answers of the defendants C. D., E. F., and G. H., to interrogatories, the admission in writing, dated and signed by [Mr. the solicitor for] the plaintiff A. B. and by [Mr. the solicitor for] the defendant C. D., the affidavit of filed the day of , the affidavit of filed the day of , the evidence of taken on their oral examination at the trial, and an exhibit marked X, being an indenture dated, &c., and made between [*parties*], and what was alleged by counsel on both sides: This Court doth declare, &c.

And this Court doth order and adjudge, &c.

## No. 7.

[Heading as in Form 1.]

Judgment  
after trial  
with a jury.

15th November, 18 .

The action having on the 12th and 13th November, 18 , been tried before the Honorable Mr. Justice , with a special jury of the county of , and the jury having found [*state findings as in officer's certificate*], and the said Mr. Justice having ordered that judgment be entered for the



plaintiff for                    £. and costs [or as the case may be]: Therefore it is adjudged that the plaintiff recover against the defendant                    £. and                    £. for his costs [or that the plaintiff recover nothing against the defendant, and that the defendant recover against the plaintiff                    £. for his costs of defence, or as the case may be].

**Appendix F.**  
**Nos. 7—11.**

**No. 8.**

[Heading as in Form 1.]

Judgment  
after trial  
before referee.

30th November, 18 .

The action having on the 27th November, 18 , been tried before X. Y., Esq., an official [or special] referee; and the said X. Y. having found [or having ordered that judgment be entered] [state substance of referee's certificate], it is this day adjudged that

[NOTE.—See S. C. Jud. Act, 1884, ss. 9 and 10, ante, p. 116, and O. XXXVI., r. 50, ante, p. 305.]

**No. 9.**

[Heading as in Form 1.]

Judgment  
after trial of  
questions of  
account by  
referee.

The                    day of                    , 18 .

The questions of account in this action having been referred to                    , and he having found that there is due from the                    to the                    the sum of                    £., and directed that the                    do pay the costs of the reference,

It is this day adjudged that the                    recover against the said                    £. and costs to be taxed.

The above costs have been taxed and allowed at                    £., as appears by a [taxing officer's] certificate dated the                    day of                    , 18 .

**No. 10.**

[Heading as in Form 1.]

Judgment  
upon motion  
for judgment.

30th November, 18 .

This day before                    Mr. X. of counsel for the plaintiff [or as the case may be], moved on behalf of the said                    [state judgment moved for], and the said Mr. X. having been heard of counsel for                    and Mr. Y. of counsel for                    , the Court adjudged

**No. 11.**

[Heading as in Form 1.]

Judgment  
after trial by  
court without  
jury.

This action having on the                    day of                    18 , been tried before                    , and the said                    on the                    day of                    , 18 , having ordered that judgment be entered for the                    for                    £.:

It is this day adjudged that the                    recover from the                    £. and costs to be taxed.

The above costs have been taxed and allowed at                    £., as appears by a [taxing officer's] certificate dated the                    day of                    , 18 .

Judgment entered the                    day of                    18 .

**Appendix F.**  
**Nos. 12—15.**Judgment in  
pursuance of  
order.**No. 12.***[Heading as in Form 1.]*

Pursuant to the Order of \_\_\_\_\_, dated \_\_\_\_\_, 18\_\_\_\_, whereby it was ordered \_\_\_\_\_ and default having been made,

It is this day adjudged that the plaintiff recover against the said defendant £. and costs to be taxed.

The above costs have been taxed and allowed at £., as appears by a [taxing officer's] certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

**No. 13.***[Heading as in Form 1.]*Judgment  
on certificate  
of Registrar  
of County  
Court.

The \_\_\_\_\_ day of \_\_\_\_\_ 18\_\_\_\_.

This action having been ordered under section 26 of the County Courts Act, 1856 (19 & 20 Vict. c. 108), to be tried in the County Court of \_\_\_\_\_, and the registrar of that Court having certified that the result was \_\_\_\_\_,

It is this day adjudged that \_\_\_\_\_ recover against \_\_\_\_\_ £. and costs to be taxed.

The above costs have been taxed and allowed at £., as appears by a [taxing officer's] certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

[NOTE.—As to costs, see O. LXV., r. 4, *ante*, p. 478.]

**No. 14.***[Heading as in Form 1.]*Judgment for  
defendant's  
costs on dis-  
continuance.

The \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

The plaintiff having by a notice in writing dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, wholly discontinued this action [*or withdrawn his claim in this action for, or withdrawn so much of his claim in this action as relates to \_\_\_\_\_, or as the case may be*],

It is this day adjudged that the defendant recover against the plaintiff costs to be taxed.

The above costs have been taxed and allowed at £., as appears by a Taxing Officer's certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

**No. 15.***[Heading as in Form 1.]*Judgment for  
plaintiff's  
costs after  
confession of  
defence.

The \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

The defendant in his defence herein having alleged a ground of defence which arose after the commencement of this action, and the plaintiff having on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, delivered a confession of that defence,

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at £., as appears by a Taxing Officer's certificate dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

No. 16.

[Heading as in Form 1.]

Appendix F.  
Nos. 16—18.

Judgment for  
costs after  
acceptance of  
money paid  
into Court.

The            day of            , 18 .

The defendant having paid into Court in this action the sum of            £. in satisfaction of the plaintiff's claim, and the plaintiff having by his notice dated the            day of            , 18 , accepted that sum in satisfaction of his entire cause of action, and the plaintiff's costs herein having been taxed, and the defendant not having paid the same within forty-eight hours after the said taxation;

It is this day adjudged that the plaintiff recover against the defendant costs to be taxed.

The above costs have been taxed and allowed at            £., as appears by a Taxing Officer's certificate dated the            day of            , 18 .

No. 17.

[Heading as in Form 1.]

Judgment  
where no  
judgment  
entered at  
trial by jury.

The            day of            , 18 .

This action having on the            , 18 , been tried before            and a jury of the            of            , and the jury having found            , and the            not having thought fit to order any judgment to be entered, Now on motion before the Court for judgment on behalf of the            , the Court having

It is this day adjudged that the            recover against the            the sum of            £. and costs to be taxed.

The above costs have been taxed and allowed at            £., as appears by a Master's certificate dated the            day of            , 18 .

Judgment entered the            day of            , 18 .

No. 18.

[Heading as in Form 1.]

Judgment on  
motion after  
trial of issue.

The            day of            , 18 .

The issues or questions of fact arising in this action [or cause or matter] by the order dated the            day of            ordered to be tried before            having on the            day of            been tried before            , and the            having found            , Now on motion before the Court for judgment on behalf of the            , the Court having

It is this day adjudged that the            recover against the            the sum of            £. and costs to be taxed.

The above costs have been taxed and allowed at            £., as appears by a Master's certificate dated the            day of            , 18 .

Judgment entered the            -day of            , 18 .



Appendix G.  
Part I.  
Nos. 1—3.

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## APPENDIX G.

### PART I.

#### FORMS OF PRÆCIPE.

[The forms of præcipes in this Appendix are prescribed by O. XLII., r. 12. As to execution generally, see O. XLII., *ante*, p. 339.]

Of Fieri facias.

#### No. 1.

18 . [*Here put the letter and number.*]

In the High Court of Justice.  
Division.

Between *A. B.*, Plaintiff,  
and  
*C. D.* and others, Defendants.

Seal a writ of fieri facias directed to the sheriff of \_\_\_\_\_ to levy against  
*C. D.* the sum of £ \_\_\_\_\_ and interest thereon at the rate of £ \_\_\_\_\_  
per centum per annum from the \_\_\_\_\_ day of \_\_\_\_\_ [and £ \_\_\_\_\_ costs]  
to \_\_\_\_\_

Judgment [*or order*] dated \_\_\_\_\_ day of \_\_\_\_\_ .]

[Taxing Officer's certificate, dated \_\_\_\_\_ day of \_\_\_\_\_ .]

*X. Y.*, solicitor for [*party on whose behalf writ is to issue*].

#### No. 2.

Of Elegit.

[*Heading as in Form 1.*]

Seal a writ of elegit directed to the sheriff of \_\_\_\_\_ against \_\_\_\_\_ of  
in the county of \_\_\_\_\_ for not paying to *A. B.* the sum of £ \_\_\_\_\_, together  
with interest thereon, from the \_\_\_\_\_ day of \_\_\_\_\_ [and the sum of £ \_\_\_\_\_  
for costs], with interest thereon at the rate of £4 per centum per annum.

Judgment [*or order*] dated \_\_\_\_\_ day of \_\_\_\_\_ 18 .

[Taxing Officer's certificate, dated \_\_\_\_\_ day of \_\_\_\_\_ 18 .]

*X. Y.*,  
Solicitor for \_\_\_\_\_ .

#### No. 3.

Of Venditioni  
Exponas.

[*Heading as in Form 1.*]

Seal a writ of venditioni exponas directed to the sheriff of \_\_\_\_\_ to sell the  
goods and \_\_\_\_\_ of *C. D.* taken under a writ of fieri facias in this action tested  
day of \_\_\_\_\_ .

*X. Y.*,  
Solicitor for \_\_\_\_\_ .

No. 4.

[Heading as in Form 1.]

Seal a writ of fieri facias de bonis ecclesiasticis directed to the Bishop [or Archbishop, as the case may be] of \_\_\_\_\_ to levy against C. D. the sum of £ \_\_\_\_\_

Judgment [or order] dated \_\_\_\_\_ day of \_\_\_\_\_  
[Taxing Officer's certificate, dated \_\_\_\_\_ day of \_\_\_\_\_]  
X. Y.,  
Solicitor for \_\_\_\_\_

Appendix G.  
Part I.  
Nos. 4—9.

Of Fieri facias  
de bonis  
ecclesiasticis.

No. 5.

[Heading as in Form 1.]

Seal a writ of sequestrari facias directed to the Bishop of \_\_\_\_\_ against C. D. for not paying to A. B. the sum of £ \_\_\_\_\_

Of Sequestrari  
facias de bonis  
ecclesiasticis.

No. 6.

[Heading as in Form 1.]

Seal a writ of sequestration against C. D. for not \_\_\_\_\_ at the suit of A. B. directed to [names of commissioners].  
Order dated \_\_\_\_\_ day of \_\_\_\_\_

Of Writ of  
sequestration.

No. 7.

[Heading as in Form 1.]

Seal a writ of possession directed to the sheriff of \_\_\_\_\_ to deliver possession to A. B., of \_\_\_\_\_  
Judgment dated \_\_\_\_\_ day of \_\_\_\_\_

Of Writ of  
possession.

No. 8.

[Heading as in Form 1.]

Seal a writ of delivery directed to the sheriff of \_\_\_\_\_ to make delivery to A. B., of \_\_\_\_\_

Of Writ of  
delivery.

No. 9.

18 . [Here put the letter and number.]

In the High Court of Justice,  
Probate Divorce and Admiralty Division.

Between A. B., plaintiff,  
and  
the Owners of the \_\_\_\_\_

I, A. B., solicitor for the [state whether plaintiff or defendant], pray a commission for the appraisement and sale of the [state name and nature of property] which was decreed by the Court on the \_\_\_\_\_ day of \_\_\_\_\_, 18 .

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 .

[To be signed by the solicitor, or by his clerk for him.]

Of commis-  
sion of ap-  
praisement  
and sale.

**Appendix G.**  
**Part I.**  
**Nos. 10—14.**

**No. 10.**

[Heading as in Form 1.]

Of Writ of  
 attachment.

Seal in pursuance of order dated            day of            , an attachment  
 directed to the sheriff of            against *C. D.* for not delivering to *A. B.*

**No. 11.**

[Heading as in Form 1.]

Of Distringas  
 against ex-  
 sheriff.

Seal a writ of distringas nuper vicecomitem quod venditioni exponas, directed  
 to the sheriff of            , to sell the goods and            of            , taken under  
 a writ of fieri facias in this action tested the            day of            , 18            .  
    Dated the            day of            , 18            .

(Signed)

(Address)

Solicitor for the

**No. 12.**

[Heading as in Form 1.]

Of Inquiry.

Seal a writ of inquiry directed to the sheriff of            to assess the damages  
 in this action.

Judgment dated

Dated the            day of            , 18            .

(Signed)

(Address)

Solicitor for the

**No. 13.**

[Heading as in Form 1.]

Of Certiorari.

Seal in pursuance of order dated            a writ of certiorari directed to            .  
    Dated the            day of            , 18            .

(Signed)

(Address)

Solicitor for the

**No. 14.**

18            . [Here put letter and number.]

Of Prohibi-  
 tion.

In the High Court of Justice,  
    Division.

In the matter of a certain

now depending in the Court.

Between

Plaintiff,

and

Defendant.

Seal a writ of prohibition directed to the Judge of the above-named Court and  
 to the above-named plaintiff to prohibit them from further proceeding in the  
 said            , 18            .

Dated the            day of            , 18            .

(Signed)

(Address)

Solicitor for the



No. 15.

Appendix G.  
Part I.  
Nos. 15—19.

[Heading as in Form 1.]

Seal in pursuance of order dated a writ of mandamus directed to  
commanding to returnable

Of Mandamus.

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

No. 16.

[Heading as in Form 1.]

Seal in pursuance of order dated a writ of habeas corpus ad testi-  
ficandum directed to the to bring before

Of Habeas  
Corpus ad  
testificandum.

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

No. 17.

[Heading as in Form 1.]

Seal in pursuance of order dated a writ in the nature of a mandamus  
or commission to examine witnesses directed to

Of commission  
to examine  
witnesses.

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

No. 18.

[Heading as in Form 1.]

Seal in pursuance of order dated , a commission of partition directed  
to returnable

Of commission  
of partition.

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

No. 19.

[Heading as in Form 1.]

Amend in pursuance of order [or fiat] dated , the writ of summons in  
this action by [set out amendments when required].

Of Amended  
summons.

Dated the day of , 18 .

(Signed)

(Address)

Solicitor for the

**Appendix G.**  
**Part I.**  
**Nos. 20—24.**

**No. 20.**

[Heading as in Form 1.]

Of Renewed  
summons.Seal in pursuance of order dated , a renewed writ of summons in this  
action endorsed as follows

Dated the            day of            , 18 .

(Signed)

(Address)

Solicitor for the

---

**No. 21.**

[Heading as in Form 1.]

Of Subpœna.

Seal writ of subpœna  
returnable

on behalf of the            , directed to            ,

Dated the            day of            , 18 .

(Signed)

(Address)

Solicitor for the

---

**No. 22.**

[Heading as in Form 1.]

Entry of  
action for  
trial.

Enter this action for trial.

Dated the            day of            , 18 .

(Signed)

(Address)

---

**No. 23.**

[Heading as in Form 1.]

Entry of  
appeal.Enter this appeal from the order [or judgment] of            in this action,  
dated the            day of            , 18 .

Dated the            day of            , 18 .

(Signed)

(Address)

---

**No. 24.**

[Heading as in Form 1.]

Entry for  
argument  
generally.

Set down for argument the

Dated the            day of            , 18 .

(Signed)

(Address)

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No. 25.

Appendix G.  
Part I.  
Nos. 25—28.

[Heading as in Form 1.]  
Set down the Mr. , the , dated the day of 18 , of  
a special case. , the referee in this for hearing as Entry of  
Dated the day of , 18 . special case.  
(Signed)  
(Address)

No. 26.

[Heading as in Form 1.]

Memorandum  
of service of  
notice of  
judgment.

Enter memorandum of service of notice of judgment made in this action, and  
dated the day of , 18 , on the under-mentioned  
persons, viz. :—

Name of Party served.	Date of Service.

Dated the day of , 18 .  
(Signed)  
(Address)

[NOTE.—See O. XVI., r. 42, *ante*, p. 187.]

No. 27.

[Heading as in Form 1.]

Search.

Search for  
Dated the day of 18 .  
(Signed)  
(Address)  
Agent for  
Solicitor for

No. 28.

Take notice that from the time of the service of this notice you [or as the case may be, the infant or person of unsound mind] will be bound by the proceedings on notice of judgment.  
in the above cause in the same manner as if you [or the said infant or person of unsound mind] had been originally made a party, and that you [or the said infant or person of unsound mind] may, on entering an appearance at the Central Office, attend the proceedings under the within mentioned judgment [or order] and that you [or the said infant or person of unsound mind] may within one month after the service of this notice apply to the Court to add to the judgment [or order].

[NOTE.—See O. XVI., r. 43, *ante*, p. 187.]



Appendix H.  
Nos. 1, 2.

## APPENDIX H.

[The forms in this Appendix are prescribed by O. XLII., r. 14, *ante*, p. 343.]

## FORMS OF WRITS.

## No. 1.

Writ of fieri  
facias.

18 . [Here put the letter and number.]

18 . B. No. .

In the High Court of Justice,  
Division.

Between A. B., Plaintiff,  
and  
C. D., Defendant.

Victoria, by the grace of God, &c.  
of Great Britain and Ireland, Queen, Defender of the Faith.

To the sheriff of greeting.

We command you that of the goods and chattels of C. D. in your bailiwick you cause to be made the sum of l. and also interest thereon at the rate of l. per centum per annum from the day of [day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be] which said sum of money and interest were lately before us in our High Court of Justice in a certain action [or certain actions, as the case may be] wherein A. B. is plaintiff and C. D. defendant [or in a certain matter there depending intituled "In the matter of E. F.," as the case may be] by a judgment [or order, as the case may be] of our said Court, bearing date the day of adjudged [or ordered, as the case may be] to be paid by the said C. D. to A. B., together with certain costs in the said judgment [or order, as the case may be] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of l. as appears by the certificate of the said taxing officer, dated the day of . And that of the goods and chattels of the said C. D. in your bailiwick you further cause to be made the said sum of l. [costs], together with interest thereon at the rate of 4l. per centum per annum from the day of [day of the judgment or order, or day on which money directed to be paid, or day from which interest is directed by the order to run, as the case may be], and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said A. B. in pursuance of the said judgement [or order, as the case may be]. And in what manner you shall have executed this our writ make appear to us in our said Court immediately after the execution thereof. And have there then this writ.

Witness, &c.

[NOTE.—As to issuing a writ of *fi. fa.*, see O. XLII., r. 17, *ante*, p. 344. As to the effect of the writ, see O. XLIII., rr. 1—3, *ante*, pp. 349, 350.]

## No. 2.

[Heading as in Form 1.]

Fieri facias  
on order for  
costs.

Victoria, by the grace of God, &c.

To the sheriff of greeting.

We command you, that of the goods and chattels of in your bailiwick you cause to be made the sum of l. for certain costs which

Witness, &c.

The \_\_\_\_\_ is a \_\_\_\_\_, and resides at \_\_\_\_\_ in your bailiwick.

judgment or order interest is ordered to run [from some other date] shall have been levied. Therefore we command you that without delay you cause to be delivered to the said A. B., by a reasonable price and extent, all such lands and tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, in your bailiwick as the said C. D., or any person or persons in trust for him was or were seised or possessed of on the said day of [date of judgment or order], or

**Appendix H.**  
**Nos. 3—5.**

at any time afterwards, or over which the said *C. D.* on the said day of \_\_\_\_\_, [date of judgment or order], or at any time afterwards had any disposing power which he might without the assent of any other person, exercise for his own benefit, to hold the said lands, tenements, rectories, tithes, rents, and hereditaments respectively, according to the nature and tenure thereof, to him and to his assigns until the said two several sums and interest as aforesaid, shall have been levied. And in what manner you shall have executed this our writ make appear to us in our Court aforesaid, immediately after the execution thereof, under your seals, and the seals of those by whose oath you shall make the said extent and appraisement. And have there then this writ.

Witness, &c.

[NOTE.—As to the issue of a writ of *elegit*, see O. XLII., r. 17, *ante*, p. 344. As to the effect of a writ of *elegit*, see O. XLIII., rr. 1—3, *ante*, pp. 349, 350.

Since the 1st January, 1884, the writ of *elegit* no longer extends to goods. See 46 & 47 Vict. c. 52, s. 146. The form in the text has been altered by the Practice Masters in accordance with this provision. It also provides for interest on costs running from the date of the judgment in accordance with *Pyman v. Burt*, W. N. (1884), 100.]

**No. 4.**

[Heading as in Form 1.]

Writ of  
venditioni  
exponas.

Victoria, by the grace of God, &c.

To the sheriff of \_\_\_\_\_ greeting.

Whereas by our writ we lately commanded you that of the goods and chattels of *C. D.* [here recite the *fieri facias* to the end]. And on the \_\_\_\_\_ day of \_\_\_\_\_ you returned to us in the \_\_\_\_\_ Division of our High Court of Justice aforesaid, that by virtue of the said writ to you directed you had taken goods and chattels of the said *C. D.* to the value of the money and interest aforesaid, which said goods and chattels remained in your hands unsold for want of buyers. Therefore, we being desirous that the said *A. B.* should be satisfied his money and interest aforesaid, command you that you expose to sale and sell, or cause to be sold, the goods and chattels of the said *C. D.*, by you in form aforesaid taken, and every part thereof, for the best price that can be gotten for the same, and have the money arising from such sale before us in our said Court of Justice immediately after the execution hereof, to be paid to the said *A. B.* And have there then this writ.

Witness, &c.

[NOTE.—See O. XLIII., r. 5, *ante*, p. 350.]

**No. 5.**

[Heading as in Form 1.]

Writ of fieri  
facias de bonis  
ecclesiasticis.

Victoria, by the grace of God, &c.

To the Right Reverend Father in God [John] by Divine permission Lord Bishop of \_\_\_\_\_ greeting: We command you, that of the ecclesiastical goods of *C. D.*, clerk in your diocese, you cause to be made \_\_\_\_\_ *l.* which lately before us in our High Court of Justice in a certain action [or certain actions, as the case may be] wherein *A. B.* is plaintiff and *C. D.* is defendant [or in a certain matter there depending, intituled "*In the matter of E. F.*," as the case may be], by a judgment [or order, as the case may be] of our said Court bearing date the \_\_\_\_\_ day of \_\_\_\_\_, was adjudged [or ordered, as the case may be] to be paid by the said *C. D.* to the said *A. B.*, together with interest on the said sum of \_\_\_\_\_ at the rate of \_\_\_\_\_ *l.* per centum per annum, from the \_\_\_\_\_ day of \_\_\_\_\_, and have that money, together with such interest as aforesaid before us in our said



Court immediately after the execution hereof, to be rendered to the said *A. B.*, for that our sheriff of returned to us in our said Court on [or "at a day now past"] that the said *C. D.* had not any goods or chattels or any lay fee in his bailiwick whereof he could cause to be made the said *l.* and interest aforesaid or any part thereof, and that the said *C. D.* was a beneficed clerk (to wit) rector of rectory [or vicar of the vicarage] and parish church of , in the said sheriff's county, and within your diocese [as in the return]. And in what manner, &c. : And have you there then this writ.

Witness, &c.

[Note.—See O. XLIII., rr. 3—5, ante, p. 350.]

Appendix H.  
Nos. 5—7a.

No. 6.

Victoria, by the grace of God, &c. To the Right Reverend Father in God [John] by Divine Providence Lord Archbishop of Canterbury, Primate of all England and Metropolitan, greeting: We command you, that of the ecclesiastical goods of *C. D.*, clerk in the diocese of which is within the province of Canterbury, as ordinary of that church, the episcopal see of now being vacant, you cause to be made [&c., conclude as in the preceding form].

Writ of fieri facias to the Archbishop de bonis ecclesiasticis during the vacancy of a bishop's see.

No. 7.

[Heading as in Form 1.]

Victoria, by the grace of God, &c. To the Right Reverend Father in God [John] by Divine permission Lord Bishop of greeting: Whereas we lately commanded our sheriff of that he should omit not by reason of any liberty of his county, but that he should enter the same, and cause [to be made, if after the return to a fieri facias, or delivered, if after the return to an elegit, &c., and in either case recite the former writ]. And whereupon our said sheriff of on [or "at a day past"] returned to us in the division of our said Court of Justice, that the said *C. D.* was a beneficed clerk; that is to say, rector of the rectory [or vicar of the vicarage] and parish church of , in the county of , and within your diocese, and that he had not any goods or chattels, or any lay fee in his bailiwick [here follow the words of the sheriff's return]. Therefore, we command you that you enter into the said rectory [or vicarage] and parish church of , and take and sequester the same into your possession, and that you hold the same in your possession until you shall have levied the said *l.* and interest aforesaid, of the rents, tithes, rent-charges in lieu of tithes, oblations, obventions, fruits, issues, and profits thereof, and other ecclesiastical goods in your diocese of and belonging to the said rectory [or vicarage] and parish church of , and to the said *C. D.* as rector [or vicar] thereof to be rendered to the said *A. B.*, and in what manner, &c. -

Writ of sequestrari facias de bonis ecclesiasticis.

And have you there then this writ.

Witness, &c.

[Note.—See O. XLIII., r. 5, ante, p. 350.]

No. 7a.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To the sheriff of , greeting.

Whereas lately in our High Court of Justice, by a [judgment or order] of the Division of the same Court, it was [adjudged or ordered] that the

Writ of possession and fi. fa.

**Appendix H.**  
**Nos. 7a, 8.**

[plaintiff, or as may be] recover possession of all that [describe premises as in judgment or order], with the appurtenances in your bailiwick: Therefore we command you that you omit not by reason of any liberty of your county, but that you enter the same and without delay you cause the said [plaintiff, or as may be] to have possession of the said land and premises, with the appurtenances; And we further command you that of the goods and chattels of the said in your bailiwick, you cause to be made the sum of £ , and also interest thereon at the rate of £4 per centum per annum, from the day of , which said sum of money and interest were in the said action by the [judgment therein adjudged, or order dated the day of ordered] to be paid by the said to , together with certain costs in the said [judgment or order] mentioned, and which costs have been taxed and allowed by one of the taxing Officers of our said Court at the sum of £ as appears by the certificate of the said taxing Officer dated the day of . And that of the goods and chattels of the said in your bailiwick you further cause to be made the said sum of £ [costs], together with interest thereon at the rate of £4 per centum per annum from the day of , and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said in pursuance of the said [judgment or order]. And in what manner you have executed this our writ make appear to us in our High Court of Justice immediately after the execution thereof. And have there then this writ.

Witness, &c.

This writ was issued by of , agent for , of , licitor for the , who resides at .

The defendant is a , and resides at , in your bailiwick.

Cause possession to be delivered to the [plaintiff, or as may be] of the within-mentioned premises [if for part only of premises, say "described as"].

And levy £ and interest at £4 per centum per annum, from the day of , 188 , and £ for costs of execution, besides poundage fees and expenses of execution.

[NOTE.—This form has been settled by the Practice Masters.]

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**No. 8.**

Writ of possession.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To the Sheriff of , greeting:

Whereas lately in our High Court of Justice, by a judgment of the Division of the same Court [*A. B.* recovered] or [*E. F.* was ordered to deliver to *A. B.*] possession of all that with the appurtenances in your bailiwick: Therefore, we command you that you omit not by reason of any liberty of your county, but that you enter the same, and without delay you cause the said *A. B.* to have possession of the said land and premises with the appurtenances. And in what manner, &c.

And have you there then this writ.

Witness, &c.

[NOTE.—See O. XLII., r. 5, ante, p. 340, and O. XLVII., ante, p. 366.]

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No. 9.

18 . [Here put the letter and number.]

In the High Court of Justice.

Probate Divorce and Admiralty Division.

Between *A. B.*, Plaintiff,

and

The Owners of the

Victoria, by the grace of God, &c. To the Marshal of the Probate Divorce and Admiralty Division of the High Court of Justice, and to all and singular his substitutes, greeting. Whereas in an action of possession commenced in our said High Court on behalf of against the or vessel called the , her tackle, apparel and furniture, [and against inter- vening,] the Judge has ordered possession of the said or vessel to be delivered up to the said or to his lawful attorney for his use. We therefore hereby command you to release the said vessel, her tackle, apparel and furniture, from the arrest made by virtue of our warrant in that behalf, and to deliver possession thereof to the said or to his lawful attorney for his use.

Writ of pos- session in Ad- miralty action.

Witness, &c.

Writ of possession.

Taken out by

(Seal.)

No. 10.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To the Sheriff of

greeting:

We command you, that without delay you cause the following chattels, that is to say [*here enumerate the chattels recovered by the judgment or order for the return of which execution has been ordered to issue*], to be returned to *A. B.*, which the said *A. B.* lately in our High Court of Justice recovered against *C. D.* [*or C. D.* was ordered to deliver to the said *A. B.*] in an action in the Division of our said Court.\* And we further command you, that if the said chattels cannot be found in your bailiwick, you distrain the said *C. D.* by all his lands and chattels in your bailiwick, so that neither the said *C. D.*, nor any one for him, do lay hands on the same until the said *C. D.* render to the said *A. B.* the said chattels.†

Writ of delivery.

And in what manner, &c.

And have you there then this writ.

Witness, &c.

[NOTE.—See O. XLII., r. 6, *ante*, p. 340, and O. XLVIII., *ante*, p. 366.]

No. 11.

*The like, but instead of a distress until the chattel is returned, commanding the Sheriff to levy on defendant's goods the assessed value of it.*

[*Proceed as in the preceding form until the\*, and then thus:*] And we further command you, that if the said chattels cannot be found in your bailiwick, of the goods and chattels of the said *C. D.* in your bailiwick you cause to l. [*the assessed value of the chattels*].†



**Appendix H.**  
**Nos. 11—13.**

And in what manner, &c.

And have you there then this writ.

Witness, &c.

[If in either of the preceding forms it is wished to include damages, costs, and interest, proceed to the † and continue thus.]

And we further command you that of the goods and chattels of the said *C. D.* in your bailiwick, you cause to be made the sum of *l.* [damages]. And also interest thereon at the rate of 4*l.* per centum per annum, from the day of , which said sum of money and interest were in the said action by the judgment therein [or by order dated the day of adjudged [or ordered] to be paid by the said *C. D.* to *A. B.* together with certain costs in the said judgment [or order] mentioned, and which costs have been taxed and allowed by one of the taxing officers of our said Court at the sum of *l.*, as appears by the certificate of the said taxing officer dated the day of . And that of the goods and chattels of the said *C. D.* in your bailiwick you further cause to be made the said sum of *l.* [costs], together with interest thereon at the rate of 4*l.* per centum per annum from the day of , and that you have that money and interest before us in our said Court immediately after the execution hereof to be paid to the said *A. B.* in pursuance of the said judgment [or order].

And in what manner, &c.

And have you there then this writ.

Witness, &c.

**No. 12.**

[Heading as in Form 1.]

Writ of  
attachment.

Victoria, by the grace of God, &c.

To the sheriff of greeting.

We command you to attach *C. D.* so as to have him before us in the Division of our High Court of Justice wheresoever the said Court shall then be, there to answer to us, as well touching a contempt which he it is alleged hath committed against us, as also such other matters as shall be then and there laid to his charge, and further to perform and abide such order as our said Court shall make in this behalf, and hereof fail not, and bring this writ with you.

Witness, &c.

[NOTE.—See O. XLII., r. 6, *ante*, p. 340, and O. XLIV., *ante*, p. 352.]

**No. 13.**

[Heading as in Form 1.]

Writ of se-  
questration.

Victoria, by the grace of God, &c.

To [names of not less than four commissioners] greeting.

Whereas lately in the Division of our High Court of Justice in a certain action there depending, wherein *A. B.* is plaintiff and *C. D.* and others are defendants [or, in a certain matter then depending, intituled “In the matter of *E. F.*,” as the case may be] by a judgment [or order, as the case may be] of our said Court made in the said action [or matter], and bearing date the day of 18 , it was ordered that the said *C. D.* should [pay into Court to the credit of the said action the sum of *l.*, or, as the case may be]. Know ye, therefore, that we, in confidence of your prudence and fidelity, have given, and by these presents do give to you, or any three or two of you, full power and authority to enter upon all the messuages, lands, tenements, and real estate whatsoever of the said *C. D.*, and to collect, receive, and sequester into

your hands not only all the rents and profits of his said messuages, lands, tenements, and real estate, but also all his goods, chattels, and personal estates whatsoever; and therefore we command you, any three or two of you, that you do at certain proper and convenient days and hours, go to and enter upon all the messuages, lands, tenements, and real estates of the said *C. D.*, and that you do collect, take, and get into your hands not only the rents and profits of his said real estate, but also all his goods, chattels, and personal estate, and detain and keep the same under sequestration in your hands until the said *C. D.* shall [pay into Court to the credit of the said action the sum of *l.*, or, as the case may be], clear his contempt, and our said Court make other order to the contrary.

Witness, &c.

[NOTE.—See O. XLII., rr. 6, 31, *ante*, pp. 340, 348, and O. XLIII., r. 6, *ante*, p. 350.]

Appendix H.  
Nos. 13—15.

No. 14.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To the sheriff of

greeting.

We command you that you distrain late sheriff of your county aforesaid by all his land and chattels in your bailiwick, so that neither he nor anyone by him do lay hands on the same until you shall have another command from us in that behalf, and that you answer to us for the issues of the same, so that the said expose for sale and sell or cause to be sold for the best price that can be gotten for the same, those goods and chattels which were of in your bailiwick, to the value of *l.* ["the amount of," or "part of"] the sum of *l.* which lately before us in our High Court of Justice in a certain action wherein plaintiff and defendant, by a ["judgment" or "order"] of our said Court bearing date the day of , was ["adjudged" or "ordered"] to be paid by the said to the said , and of the sum of *l.*, the amount at which the costs in the said ["judgment" or "order"] mentioned have been taxed and allowed, and of interest on the said sum of *l.* at the rate of 4*l.* per centum per annum from the day of , and on the said sum of *l.* at the same rate from the day of , which goods and chattels he lately took by virtue of our writ, and which remain in his hands for want of buyers, as the said late sheriff hath lately returned to us in our said Court. And have the money arising from such sale before us in our said Court immediately after the execution hereof, to be paid to the said . And have there then this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a , and resides at , in your bailiwick.

Distringas  
against ex-  
sheriff.

No. 15.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To the sheriff of

, greeting.

Whereas by the judgment of the Mayor's Court, London, it has been adjudged that the said recover against the said the sum of *l.*

Fieri facias on  
judgment  
removed from  
Lord Mayor's  
Court.

**Appendix H.**  
**Nos. 15, 16.**

[*debt and costs*]. And whereas this judgment has been removed into our High Court of Justice, and has become of the same effect as a judgment recovered in that Court: And whereas the costs attendant on the removal of the said judgment were on the [*day of removal*] day of , 18 , taxed and allowed at *l.* [*costs of removal*]. Therefore we command you, that of the goods and chattels of the said in your bailiwick, you cause to be made the said sums of *l.* and *l.* with interest thereon at the rate of 4*l.* per centum per annum from the said day of , 18 , and that you have that money and interest before us in our said Court immediately after the execution hereof, to be rendered to the said . And in what manner, &c.

And have then there this writ.

Witness, &c.

Levy *l.*, and *l.* for costs of execution, and also interest on *l.* at 4*l.* per centum per annum, from the day of , 18 , until payment; besides sheriff's poundage, officers' fees, costs of levying, and all other legal incidental expenses.

This writ was issued by, &c.

The defendant is a , and resides at in your bailiwick.

**No. 16.**

[*Heading as in Form 9.*]

Commission  
of appraise-  
ment and sale.

Victoria, by the grace of God, &c. To the Marshal of the Probate Divorce and Admiralty Division of our said High Court, and to all and singular his substitutes, greeting. Whereas in an action of , commenced in Our said High Court on behalf of against [and against in-  
tervening], the Judge has ordered the said to be appraised and sold. We therefore hereby authorise and command you to reduce into writing an inventory of the said , and having chosen one or more experienced person or persons, to swear him or them to appraise the same according to the true value thereof, and upon a certificate of such value having been reduced into writing to cause the said to be sold by public auction for the highest price, not under the appraised value thereof, that can be obtained for the same. And we further command you, immediately upon the sale being completed, to pay the proceeds arising therefrom into the Registry of the said Division, and to file the certificate of appraisement signed by you and the appraiser or appraisers, and an account of the sale signed by you, together with this commission.

Witness, &c.

Commission of Appraisement and

Sale.

(Seal.)

Taken out by



## APPENDIX J.

Appendix J.  
Nos. 1—3.

### FORMS OF SUBPŒNA, &c.

[Forms 1 to 7 in this Appendix are prescribed by O. XXXVII., r. 27,  
*ante*, p. 315.]

#### No. 1.

18 . [*Here put the letter and number.*]

In the High Court of Justice.  
Division.

Between                      Plaintiff,  
and  
Defendant.

Subpœna ad  
testificandum  
(general  
form).

Victoria, by the grace of God, &c.

To [*the names of three witnesses may be inserted*] greeting.

We command you to attend before                      at                      on                      day the  
day of                      , 18                      , at the hour of                      in the                      noon, and so from  
day to day until the above cause is tried, to give evidence on behalf of the  
plaintiff [*or defendant*]. Witness, &c.

[NOTE.—For rules as to subpœnas, see O. XXXVII., rr. 26—34, *ante*, pp.  
315, 316.]

#### No. 2.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c.

To the [keeper of our prison at]

Habeas corpus  
ad testifi-  
candum.

We command you that you bring                      , who it is said is detained in  
our prison under your custody                      , before                      at                      on                      day the  
day the                      day of                      at the hour of                      in the                      noon,  
and so from day to day until the above action is tried, to give evidence on  
behalf of the                      . And that immediately after the said                      shall  
have so given his evidence you safely conduct him to the prison from which he  
shall have been brought.

Witness, &c.

This writ was issued, &c.

#### No. 3.

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c.

To [*the names of three witnesses may be inserted*] greeting.

Subpœna  
duces tecum  
(general  
form).

We command you to attend: before                      at                      on                      day  
the                      day of                      , 18                      , at the hour of                      in the                      noon,  
and so from day to day until the above cause is tried, to give evidence on  
behalf of the                      , and also to bring with you and produce at the time and  
place aforesaid [*specify documents to be produced*].

Witness, &c.

Appendix J.  
Nos. 4—7.

Subpœna ad  
testificandum  
at assizes.

No. 4.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To [*the names of three witnesses may be inserted*] greeting.

We command you to attend before our justices assigned to take the assizes in and for the county of                      to be holden at                      on                      day the day of                      , 18                      , at the hour of                      in the                      noon, and so from day to day during the said assizes until the above cause is tried, to give evidence on behalf of the                      .

Witness, &c.

---

No. 5.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To [*the names of three witnesses may be inserted*] greeting.

We command you to attend before our justices assigned to take the assizes in and for the county of                      to be holden at                      on                      day the day of                      , 18                      , at the hour of                      in the                      noon, and so from day to day during the said assizes, until the above cause is tried, to give evidence on behalf of the                      , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

---

No. 6.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To [*the names of three witnesses may be inserted*] greeting.

We command you to attend at the sittings of the                      Division of our High Court of Justice, for                      to be holden at                      on                      day the day of                      , 18                      , at the hour of                      in the                      noon, and so from day to day during the said sittings, until the above cause is tried, to give evidence on behalf of the                      .

Witness, &c.

---

No. 7.

[Heading as in Form 1.]

Victoria, by the grace of God, &c.

To [*the names of three witnesses may be inserted*].

We command you to attend at the sittings of the                      Division of our High Court of Justice, for                      to be holden at                      on                      day the day of                      , 18                      , at the hour of                      o'clock in the noon, and so from day to day until the above cause is tried, to give evidence on behalf of the                      , and also to bring with you and produce at the time and place aforesaid [*specify documents to be produced*].

Witness, &c.

---

Subpœna ad  
testificandum  
at sittings of  
High Court.

Subpœna  
duces tecum  
at sittings of  
High Court.

**Appendix J.**  
**Nos. 8—10.**

Writ of  
inquiry for  
assessment of  
damages.

**No. 8.**

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c.

To the sheriff of                      greeting.

Whereas it has been adjudged that the plaintiff recover against the defendant damages to be assessed.

Therefore we command you, that by the oaths of twelve good and lawful men of your bailiwick you inquire what damages the plaintiff is entitled to recover under the said judgment, and that forthwith thereafter you send the inquisition which you shall take thereupon to our said Court, under your seal, and the seals of those by whose oaths you take the inquisition, together with this writ.

Witness, &c.

This writ was issued by, &c.

The defendant is a                      and resides at                      in your bailiwick.

[NOTE.—As to the proceedings on a writ of inquiry, see O. XXXVI., rr. 56—58, *ante*, pp. 306, 307.]

**No. 9.**

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c.

To the judge of the County Court holden at                      , greeting.

We, willing for certain causes to be certified of a plaint levied in our Court before you against                      , at the suit of                      , command you that you send to us forthwith in the                      Division of our High Court of Justice the said plaint with all things touching the same, as fully and entirely as the same remain in our said Court before you, by whatsoever names the parties may be called therein, together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

Certiorari to  
County Court.

**No. 10.**

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c. ———

To the                      , greeting.

We, willing for certain causes to be certified of                      , command you that you send to us in our High Court of Justice on the                      day of                      the                      aforesaid, with all things touching the same, as fully and entirely as they remain in                      , together with this writ, that we may further cause to be done thereupon what of right we shall see fit to be done.

Witness, &c.

This writ was issued by, &c.

Certiorari  
(general).



**Appendix J.**  
**Nos. 11—13.**

**Prohibition.**

**No. 11.**

[*Heading as in Form 1.*]

Victoria, by the grace of God, &c.

To the [Judge of the County Court holden at] , and to [name of plaintiff] of , greeting.

Whereas we have been given to understand that you the said have [entered a plaint against] *C. D.* in the said Court, and that the said Court has no jurisdiction in the said [cause] or to hear and determine the said [plaint] by reason that [state facts showing want of jurisdiction].

We therefore hereby prohibit you from further proceeding in the said [action] in the said Court.

Witness, &c.

This writ was issued by, &c.

[NOTE.—As to proceedings in prohibitions, see O. LXVIII., rr. 2, 3, *ante*, pp. 509, 510.]

**No. 12.**

**Mandamus.**

Victoria, by the grace of God, &c.

To , of , greeting.

Whereas by [*here recite Act of Parliament or Charter if the act required to be done is founded on either one or the other*]. And whereas we have been given to understand and be informed in the Queen's Bench Division of our High Court of Justice before us that [*insert necessary inducement and averments*]. And you the said were then and there required by [*insert demand*] but that you the said well knowing the premises, but not regarding your duty in that behalf then and there wholly neglected and refused to [*insert refusal*] nor have you or any of you at any time since in contempt of Us and to the great damage and grievance of as we have been informed from their complaint made to Us. Whereupon we being willing that due and speedy justice should be done in the premises as it is reasonable, do command you the said and every of you firmly enjoining you that you [*insert command*] or that you show us cause to the contrary thereof, lest by your default the same complaint should be repeated to Us and how you shall have executed this Our Writ make known to us in Our said Court forthwith then returning to Us this Our said Writ, and this you are not to omit.

Witness, JOHN DUKE, BARON COLERIDGE, the day of in the year of Our reign.

By the Court,  
(Signed) COCKBURN.

**No. 13.**

[*Heading as in Form 1.*]

**Commission  
to examine  
witnesses.**

Victoria, by the grace of God, &c.

To of , and of , Commissioners named by and on behalf of the , and to of , and of , Commissioners named by and on behalf of the , greeting:

Know ye that we in confidence of your prudence and fidelity have appointed you and by these presents give you power and authority to examine on interrogatories and *vivâ voce* as hereinafter mentioned witnesses on behalf of the said , and respectively, at , before you, or any two of

you, so that one Commissioner only on each side be present and act at the examination.—And we command you as follows :

Appendix J.  
No. 13.

1. Both the said                      and the said                      shall be at liberty to examine on interrogatories and *voir dire* on the subject-matter thereof or arising out of the answers thereto such witnesses as shall be produced on their behalf with liberty to the other party to cross-examine the said witnesses on cross-interrogatories and *voir dire*, the party producing any witness for examination being at liberty to re-examine him *voir dire*; and all such additional *voir dire* questions, whether on examination, cross-examination or re-examination, shall be reduced into writing, and with the answers thereto shall be returned with the said Commission.

2. Not less than                      days before the examination of any witness on behalf of either of the said parties, notice in writing, signed by any one of you, the Commissioners of the party on whose behalf the witness is to be examined, and stating the time and place of the intended examination and the names of the witnesses to be examined, shall be given to the Commissioners of the other party by delivering the notice to them, or by leaving it at their usual place of abode or business, and if the Commissioners or Commissioner of that party neglect to attend pursuant to the notice, then one of you, the Commissioners of the party on whose behalf the notice is given, shall be at liberty to proceed with and take the examination of the witness or witnesses *ex parte*, and adjourn any meeting or meetings, or continue the same from day to day until all the witnesses intended to be examined by virtue of the notice have been examined, without giving any further or other notice of the subsequent meeting or meetings.

3. In the event of any witness on his examination, cross-examination or re-examination producing any book, document, letter, paper, or writing, and refusing for good cause to be stated in his deposition to part with the original thereof, then a copy thereof, or extract therefrom, certified by the Commissioners or Commissioner present and acting to be a true and correct copy or extract, shall be annexed to the witnesses' deposition.

4. Each witness to be examined under this Commission shall be examined on oath, affirmation, or otherwise in accordance with his religion by or before the Commissioners or Commissioner present at the examination.

5. If any one or more of the witnesses do not understand the English language (the interrogatories, cross-interrogatories, and *voir dire* questions, if any, being previously translated into the language with which he or they is or are conversant), then the examination shall be taken in English through the medium of an interpreter or interpreters to be nominated by the Commissioners or Commissioner present at the examination, and to be previously sworn according to his or their several religions by or before the said Commissioners or Commissioner truly to interpret the questions to be put to the witness and his answers thereto.

6. The depositions to be taken under this Commission shall be subscribed by the witness or witnesses, and by the Commissioners or Commissioner who shall have taken the depositions.

7. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the                      day of                      , enclosed in a cover under the seals or seal of the Commissioners or Commissioner.

8. Before you or any of you, in any manner act in the execution hereof, you shall severally take the oath hereon indorsed on the Holy Evangelists or otherwise in such other manner as is sanctioned by the form of your several religions, and is considered by you respectively to be binding on your respective consciences. In the absence of any other Commissioner, a Commissioner may himself take the oath.

And we give you or any one of you authority to administer such oath to the other or others of you.

Witness, &c.

This writ was issued by, &c.

W.

R R

**Appendix J.**  
**Nos. 13, 14.**

**WITNESSES' OATH.**

You are true answer to make to all such questions as shall be asked you, without favour or affection to either party, and therein you shall speak the truth, the whole truth, and nothing but the truth. So help you God.

**COMMISSIONERS' OATH.**

You [*or I*] shall, according to the best of your [*or my*] skill and knowledge, truly and faithfully, and without partiality to any or either of the parties in this cause, take the examinations and depositions of all and every witness and witnesses produced and examined by virtue of the Commission within written. So help you [*or me*] God.

[NOTE.—It is to be observed that where there is a sole Commissioner, he may, under this form, swear himself. Formerly this point gave rise to a difficulty.]

**INTERPRETERS' OATH.**

You shall truly and faithfully, and without partiality to any or either of the parties in this cause, and to the best of your ability, interpret and translate the oath or oaths, affirmation or affirmations which he shall administer to, and all and every the questions which shall be exhibited or put to, all and every witness and witnesses produced before and examined by the Commissioners named in the Commission within written, as far forth as you are directed and employed by the said Commissioners, to interpret and translate the same out of the English into the language of such witness or witnesses, and also in like manner to interpret and translate the respective depositions taken and made to such questions out of the language of such witness or witnesses into the English language. So help you God.

**CLERKS' OATH.**

You shall truly, faithfully, and without partiality to any or either of the parties in this cause, take, write down, transcribe, and engross all and every the questions which shall be exhibited or put to all and every witness and witnesses, and also the depositions of all and every such witness and witnesses produced before and examined by the said Commissioners named in the Commission within written, as far forth as you are directed and employed by the Commissioners to take, write down, transcribe or engross the said questions and depositions. So help you God.

Direction of Interrogatories, &c., when returned by the Commissioners.

The Senior Master of the Supreme Court of Judicature, Royal Courts of Justice, London.

**No. 14.**

18 . [*Here put the letter and number.*]

Commission  
to examine  
witnesses.

In the High Court of Justice.  
Probate Divorce and Admiralty Division.

Between *A. B.*, Plaintiff,  
and  
the owners of the

Victoria, by the grace of God, &c.

To [*State name and address of examiner or commissioner appointed*]  
greeting:

Whereas in an action of \_\_\_\_\_ commenced in Our said High Court of Justice on behalf of \_\_\_\_\_ against \_\_\_\_\_, [and against \_\_\_\_\_ intervening], the Judge has ordered a commission to be issued for the examination of witnesses concerning the truth of the matters at issue in the said cause. We therefore hereby authorize you, upon the \_\_\_\_\_ day of \_\_\_\_\_ 18 , at \_\_\_\_\_, in the



presence of the solicitors in the said action, or in the presence of their or either of their lawfully appointed substitutes, or otherwise notwithstanding the absence of either of them, to swear the witnesses who shall be produced before you for examination in the said cause, and cause them to be examined, and their depositions to be reduced into writing. We further authorize you to adjourn (if necessary) the said examinations from time to time and from place to place, as you may find expedient. And We command you, upon the examinations being completed, to transmit the depositions and the whole proceedings had and done before you, together with this commission, to the Registry of the said Division of our said Court.

Appendix J.  
No. 14.

Witness, &c.

E. F., Registrar.

Commission to examine Witnesses.

Taken out by .

## APPENDIX K.

Appendix K.  
Nos. 1, 2.

### SUMMONSES AND ORDERS.

#### No. 1.

18 . [*Here put the letter and number.*]

Summons  
(general  
form).

In the High Court of Justice.  
Division.

Between Plaintiff,  
and  
Defendant.

Let all parties concerned attend the Judge [*or Master*] in Chambers on  
day the day of 18 , at o'clock in the  
noon, on the hearing of an application on the part of .

Dated the day of 18 .

This summons was taken out by of , solicitor for .  
To

[NOTE.—This form is prescribed by O. LIV., r. 10, *ante*, p. 395.]

#### No. 2.

[*Heading as in Form 1.*]

Insert name of Judge or Master] Judge [*or Master*] in Chambers.

Order  
(general  
form).

Between  
Upon hearing , and upon reading the affidavit of filed the  
day of 18 , and : It is ordered and that the  
costs of this application be .

Dated the day of 18 .

[NOTE.—This form is prescribed by O. LIV., r. 29, *ante*, p. 399.]

**Appendix K.**  
**Nos. 3—5.**

**No. 3.**

Summons for  
directions  
pursuant  
to Order XXX.

[Heading as in Form 1.]

Let all the parties concerned attend Master [fill in a date not less than  
4 days from service of summons] in Chambers, on day the day of  
18, at o'clock in the noon, on the hearing of an  
application on the part of for directions for .

[Here state all matters or proceedings previous to trial on which directions are  
required.]

Dated the day of , 18 .

This summons was taken out by , solicitor for .

To

[NOTE.—This form is prescribed by O. XXX., r. 2, ante, p. 250.]

**No. 4.**

[Heading as in Form 1.]

Order for  
directions  
pursuant  
to Order XXX.

Upon hearing and upon reading it is ordered as follows:—

1. That the plaintiff deliver to the defendant further and better particulars with dates and items of his claim, and that unless such particulars be delivered within days from the date of this order, all further proceedings be stayed until the delivery thereof.

2. That the plaintiff and defendant be at liberty to deliver to each other interrogatories in writing, and that the said parties do respectively answer the said interrogatories as prescribed by Order XXXI., rules 8 and 26.

3. That the be at liberty to issue a commission for the examination of witnesses on his behalf at , and that the trial of the action be stayed until the return of the said commission, the usual long order for the said commission to be drawn up, and unless agreed upon by the parties within one week, to be settled by the Master.

4. That the action be tried in the county of by a Judge.

5. That either party be at liberty without further summons, to apply to the Master herein for further directions, such application to be made upon two clear days' notice to be served upon the other party.

6. That the costs of this application be costs in the action.

Dated day of , 18 .

[NOTE.—This form is prescribed by O. XXX., r. 2, ante, p. 250.]

**No. 5.**

[Heading as in Form 1.]

Order for  
time.

Upon hearing , and upon reading the affidavit of filed the  
day of , 18 , and : It is ordered that the  
shall have time, and that the costs of this application be .

Dated the day of , 18 .

[NOTE.—This order need not ordinarily be drawn up: O. LII., r. 14, ante, p. 390.]

No. 6.

Appendix K.  
Nos. 6—9.

[Heading as in Form 1.]

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is ordered that the plaintiff may  
sign final judgment in this action for the amount indorsed on the writ, with  
interest, if any [or, possession of the land in the indorsement of the writ described  
as \_\_\_\_\_], and costs to be taxed, and that the costs of this application  
be \_\_\_\_\_

Order under  
Order XIV.,  
No. 1.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

No. 7.

[Heading as in Form 1.]

Order under  
Order XIV.,  
No. 2.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is ordered that the defendant  
be at liberty to defend this action by delivering a defence [within \_\_\_\_\_ days  
after service of this order], and that the costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

[NOTE.—The words in brackets should be omitted: *Egerton v. Anderson, W. N.*  
(1884), 95.]

No. 8.

[Heading as in Form 1.]

Order under  
Order XIV.,  
No. 3.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is ordered that if the defendant  
pay into Court within a week from the date of this order the sum of  
£\_\_\_\_\_, he be at liberty to defend this action by delivering a defence within  
\_\_\_\_\_ days after service of this order, but that if that sum be not so paid the  
plaintiff be at liberty to sign final judgment for the amount indorsed on the  
writ of summons, with interest, if any, and costs, and that in either event the  
costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

No. 9.

[Heading as in Form 1.]

Order under  
Order XIV.,  
No. 4.

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is ordered that if the defendant  
pay into Court within a week from the date of this order the sum of £\_\_\_\_\_,  
he be at liberty to defend this action as to the whole of the plaintiff's claim.  
And it is ordered that if that sum be not so paid the plaintiff be at liberty to sign  
judgment for that sum and the defendant be at liberty to defend this action as  
to the residue of the plaintiff's claim. And it is ordered that in either event the  
defence be delivered within \_\_\_\_\_ days after service of this order, and that the  
costs of this application be \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.



**Appendix K.**  
**Nos. 10—13.**Order to  
amend.**No. 10.***[Heading as in Form 1.]*

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ filed the  
day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is ordered that the plaintiff be at liberty  
to amend the writ of summons in this action by \_\_\_\_\_, and that the costs of  
this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

[NOTE.—See O. XXVIII., r. 1, *ante*, p. 242. This order need not ordinarily  
be drawn up: O. LII., r. 14, *ante*, p. 390.]

Order for  
particulars  
(partnership).**No. 11.***[Heading as in Form 1.]*

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_,  
filed the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_:  
It is ordered that the \_\_\_\_\_ furnish the \_\_\_\_\_ with a statement  
in writing, verified by affidavit, setting forth the names of the persons consti-  
tuting the members or co-partners of their firm, pursuant to the Rules of the  
Supreme Court, 1883, Order XVI., Rule 14, and that the costs of this applica-  
tion be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

[NOTE.—See O. XVI., r. 14, *ante*, p. 178, and also O. VII., r. 2, *ante*, p. 143.]

Order for  
particulars  
(general).**No. 12.***[Heading as in Form 1.]*

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_  
filed the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is  
ordered that the plaintiff deliver to the defendant \_\_\_\_\_ an account in  
writing of the particulars of the plaintiff's claim in this action,  
and that unless such particulars be delivered within \_\_\_\_\_ days from the  
date of this order all further proceedings be stayed until the delivery thereof,  
and that the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

[NOTE.—See O. XIX., rr. 6 to 8, *ante*, pp. 206, 207. Particulars must now  
in most cases be included in the pleadings. As to time for pleading, see r. 8.]

Order for  
particulars  
(accident  
case).**No. 13.***[Heading as in Form 1.]*

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_  
filed the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is  
ordered that the plaintiff deliver to the defendant an account in writing of the  
particulars of the injuries mentioned in the statement of claim, together with the  
time and place of the accident, and the particular acts of negligence complained  
of, and that unless such particulars be delivered within \_\_\_\_\_ days from  
the date of this order all further proceedings in this action be stayed until the  
delivery thereof, and that the costs of this application be \_\_\_\_\_.

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

No. 14.

[Heading as in Form 1.]

Upon hearing \_\_\_\_\_ and upon reading the affidavit of  
 filed the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_ :  
 It is ordered that the order of \_\_\_\_\_ in this action dated the  
 day of \_\_\_\_\_, 18\_\_\_\_, be discharged [or varied by \_\_\_\_\_], and  
 that the costs of this application be \_\_\_\_\_  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

Appendix K.  
 Nos. 14—17.

Order to  
 discharge or  
 vary on  
 application  
 by third  
 party.

No. 15.

[Heading as in Form 1.]

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ ,  
 filed the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_ :  
 It is ordered that this action be, for want of prosecution, dismissed with costs  
 to be taxed and paid to the defendant by the plaintiff, and that the costs of this  
 application be \_\_\_\_\_  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

Order to  
 dismiss for  
 want of  
 prosecution.

No. 16.

[Heading as in Form 1.]

Upon hearing \_\_\_\_\_ and upon reading the affidavit of \_\_\_\_\_ ,  
 filed the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_ :  
 It is ordered that the \_\_\_\_\_ be at liberty to deliver to the  
 interrogatories in writing, and that the said \_\_\_\_\_ do answer the inter-  
 rogatories as prescribed by Order XXXI., Rules 8 and 26 of the Rules of the  
 Supreme Court, and that the costs of this application be \_\_\_\_\_  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

Order for  
 delivery of  
 interroga-  
 tories.

[NOTE.—See O. XXXI., r. 1, *ante*, p. 251. By r. 26, the time for answering  
 runs from payment of the deposit into Court.]

No. 17.

[Heading as in Form 1.]

Upon hearing \_\_\_\_\_ : It is ordered that the \_\_\_\_\_ do, within  
 \_\_\_\_\_ days from the date of this order, answer on affidavit stating what  
 documents are or have been in \_\_\_\_\_ possession or power relating to  
 the matters in question in this action, and that the costs of this application  
 be \_\_\_\_\_  
 Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

Order for  
 affidavit as  
 to documents.

[NOTE.—As to time for making the affidavit, see O. XXXI., r. 26, *ante*,  
 p. 267.]

**Appendix K.**  
**Nos. 18, 19.**

**No. 18.**

Order to  
produce docu-  
ments for  
inspection.

[Heading as in Form 1.]

Upon hearing                      and upon reading the affidavit of  
filed the                      day of                      18                      , and                      : It is ordered that  
the                      do, at all seasonable times, on reasonable notice, produce at  
[insert place of inspection], situate at                      , the following documents,  
namely                      , and that the                      be at liberty to inspect and peruse  
the documents so produced, and to take copies and abstracts thereof, and  
extracts therefrom, at                      expense, and that in the meantime all further  
proceedings be stayed, and that the costs of this application be                      .

Dated the                      day of                      , 18                      .

[NOTE.—As to place of inspection, see O. XXXI., r. 18, *ante*, p. 264. The usual place is the solicitor's office, but in the particular case of bankers' and other business books, the place of custody may be substituted.]

**No. 19.**

Order for  
production  
(under-  
writers).

[Heading as in Form 1.]

Upon hearing                      , and upon reading the affidavit of                      ,  
filed the                      day of                      , 18                      , and                      : It is ordered that  
the (a)                      do produce and show to the                      upon oath all insurance  
slips, policies, letters of instruction, or other orders for effecting such slips or  
policies, or relating to the insurance or the subject-matter of the insurance on  
the ship                      , or the cargo on board thereof, or the freight thereby, and  
also all documents relating to the sailing or alleged loss of the said ship                      ,  
the cargo on board thereof and the freight thereby, and all letters and corre-  
spondence with any person or persons in any manner relating to the effecting  
the insurance on the said ship, the cargo on board thereof, or the freight thereby,  
or any other insurance whatsoever effected on the said ship, or the cargo on  
board thereof, or the freight thereby on the voyage insured by, or relating to  
the policy sued upon in this action, or any other policy whatsoever effected on  
the said ship, or the cargo on board thereof, or the freight thereby on the same  
voyage. Also all correspondence between the captain or agent of the vessel  
and any other person, with the owner or any person or persons previous to the  
commencement of or during the voyage upon which the alleged loss happened.  
Also all protests, surveys, log-books, charter-parties, tradesmen's bills for  
repairs, average statements, letters, invoices, bills of parcels, bills of lading, mani-  
fests, accounts, accounts-current, accounts-sales, bills of exchange, receipts,  
vouchers, books, documents, correspondence papers, and writings (whether  
originals, duplicates, or copies respectively), which now are in the custody,  
possession, or power, of the                      , his brokers, solicitors, or agents, in any  
way relating or referring to the matters in question in this action, with liberty  
for the                      to inspect and take copies of or extracts from the same or any  
of them, and that in the meantime all further proceedings be stayed, and that  
the costs of this application be                      .

Dated the                      day of                      , 18                      .

[(a) NOTE.—The blank may be filled up by inserting "the plaintiffs and all persons interested in these proceedings and in the insurance, the subject of this action:" *China Steamship Co. v. Commercial Insurance Co.*, 8 Q. B. D. 142.]



No. 20.

Appendix K.  
Nos. 20—24.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of  
filed the day of , 18 , and : It is ordered that  
the plaintiff be at liberty to issue a writ for service out of the juris-  
diction against . And it is further ordered that the time for appear-  
ance to the said writ be within days after the service thereof, and that  
the costs of this application be .

Order for  
service out  
of jurisdiction.

Dated the day of , 18 .

[NOTE.—This order need not ordinarily be drawn up: O. LII., r. 14, *ante*,  
p. 390.]

No. 21.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of  
filed the day of , 18 , and : It is ordered that service  
of a copy of this order, and of a copy of the writ of summons in this action,  
by sending the same by a pre-paid post letter, addressed to the defendant  
, at , shall be good and sufficient service of the writ.

Order for  
substituted  
service.

Dated the day of 18 .

No. 22.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of  
filed the day of , 18 , and : It is ordered that  
the writ in this action be renewed for six months from the date of its renewal,  
pursuant to the Rules of the Supreme Court, Order VIII., Rule 1.

Order for  
renewal of  
writ.

Dated the day of , 18 .

No. 23.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of , filed the  
day of , 18 , and : It is ordered that the defendant  
be at liberty to issue a notice claiming over against ,  
pursuant to the Rules of the Supreme Court, Order XVI., Rule 48.

Order for issue  
of notice  
claiming con-  
tribution.

Dated the day of , 18 .

No. 24.

[Heading as in Form 1.]

Upon hearing , and by consent it is ordered as follows:

Order of re-  
ference.

1. [State matters to be referred] shall be referred to the award of .

2. The arbitrator shall have all the powers as to certifying and amending of a  
Judge of the High Court of Justice.

**Appendix K.**  
**Nos. 24—26.**

3. The arbitrator shall make and publish his award in writing of and concerning the matters referred, ready to be delivered to the parties in difference, or such of them as require the same (or their respective personal representatives, if either of the said parties die before the making of the award) on or before the next, or on or before such further day as the arbitrator may from time to time appoint and signify in writing signed by him and indorsed on this order.

4. The said parties shall in all things abide by and obey the award so to be made.

5. The costs of the said cause and the costs of the reference and award shall be

6. The arbitrator may (if he think fit) examine the said parties to this cause, and their respective witnesses, upon oath or affirmation.

7. The said parties shall produce before the arbitrator all books, deeds, papers, and writings in their or either of their custody or power relating to the matters in difference.

8. Neither the plaintiff nor the defendant shall bring or prosecute any action against the arbitrator of or concerning the matters so to be referred.

9. If either party by affected delay or otherwise wilfully prevent the said arbitrator from making an award, he or they shall pay such costs to the other as may think reasonable and just.

10. In the event of either of the said parties disputing the validity of the said award, or moving the to set it aside, the said shall have power to remit the matters hereby referred or any or either of them to the reconsideration of the arbitrator.

11. In the event of the arbitrator declining to act or dying before he has made his award, the said parties may, or if they cannot agree, the Master may, on application by either side, appoint a new arbitrator.

12. Unless restrained by any order of the Court or a Judge, the party or parties in whose favour the award shall be made shall be at liberty within days after service of a copy of the award on the solicitor or agent of the other party to sign final judgment in accordance with the award, and for all costs that he or they may be entitled to under this order, and under the award, together with the costs of the said judgment.

Dated the                      day of                      , 18 .

**No. 25.**

[Heading as in Form 1.]

Order for  
examination  
of witnesses  
before arbi-  
trator.

Upon hearing                      and upon reading the affidavit of                      , filed the  
day of                      , 18 , and                      : It is ordered that                      attend  
before                      , the arbitrator herein on                      the                      days of                      ,  
18 , at                      , and then and there submit to be examined on oath or  
affirmation on behalf of the                      touching the matters referred to the said  
arbitrator.

Dated                      day of                      , 18 .

**No. 26.**

[Heading as in Form 1.]

Order for  
examination  
of witnesses  
and produc-  
tion of docu-  
ments.

Upon hearing                      and upon reading the affidavit of                      , filed  
day of                      , 18 , and                      : It is ordered that                      attend  
before                      , the arbitrator herein on                      the                      days                      of  
18 , at                      , and then and there submit to be examined on oath

or affirmation on behalf of the                    touching the matters referred to the said arbitrator; and it is further ordered that the said                    do at the time and place aforesaid produce and deliver to the said arbitrator the papers, documents and writings hereafter mentioned, that is to say [*specify documents to be produced*].

**Appendix K.**  
**Nos. 28—30.**

Dated the                    day of                    , 18   .

**No. 27.**

[*Heading as in Form 1.*]

Order charging stock—  
nisi.

Upon hearing                    , and upon reading the affidavit of                    filed the day of                    , 18   , whereby it appears                    : It is ordered that unless sufficient cause be shown to the contrary before                    on                    day the day of                    , 18   , at                    o'clock in the forenoon, the defendant's interest in the                    so standing as aforesaid shall, and that it in the meantime do, stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the                    day of                    18   .

**No. 28.**

[*Heading as in Form 1.*]

Order charging stock—  
absolute.

Upon hearing                    , and upon reading the affidavit of                    filed the day of                    , 18   , and an order nisi made herein on the day of                    18   , reciting the affidavit of                    , whereby it appeared                    : It is ordered that the defendant's interest in the                    so standing as aforesaid stand charged with the payment of the above-mentioned amount due on the said judgment.

Dated the                    day of                    , 18   .

**No. 29.**

[*Heading as in Form 1.*]

Charging order—solicitor's costs.

Upon hearing                    , and upon reading the affidavit of                    filed the day of                    , 18   , and                    : It is ordered that the said                    the solicitor for the                    in this action shall have a charge upon                    for his costs, charges, and expenses of and in reference to this action.

Dated the                    day of                    , 18   .

**No. 30.**

18   . [*Here put the letter and number.*]

Order to remove judgment from County Court.

In the High Court of Justice.  
Division.

Y.

Master in Chambers.

In the matter of a plaintiff in the County Court of                    holden at wherein                    , plaintiff, and                    , defendant.

Upon reading the affidavit of                    filed the                    day of                    , 18   ,



**Appendix K.**  
**Nos. 30—33.**

and the certified copy of the judgment in the plaint above-mentioned: It is ordered that a writ of certiorari issue to remove the said judgment from the above-named County Court into the Division of the High Court of Justice.

Dated the            day of            , 18 .

**No. 31.**

[Heading as in Form 1.]

Order for  
arrest (capias)  
under Debtors  
Act.

Upon hearing            , and upon reading the affidavit of            filed the day of            , 18 , and            : It is ordered that the defendant be arrested and imprisoned for the term of            from the date of his arrest, including the day of such date, unless and until he shall sooner deposit in Court the sum of £            , or give to the plaintiff a bond executed by him and two sufficient sureties in the penalty of £            , or some other security satisfactory to the plaintiff, that            ; and it is further ordered that the sheriff of            do within one calendar month from the date hereof, including the day of such date, and not afterwards, take the defendant for the purpose aforesaid, if he shall be found in the said sheriff's bailiwick.

Dated the            day of            , 18 .

[NOTE.—See O. LXIX., ante, p. 510.]

**No. 32.**

[Heading as in Form 1.]

Order of re-  
ference under  
s. 56 of the  
Supreme  
Court of Judi-  
cature Act,  
1873.

Upon hearing            and upon reading the affidavit of            , filed the day of            18 , and            : It is ordered that the following question arising in this action, namely,            be referred for inquiry and report to            , under section 56 of the Supreme Court of Judicature Act, 1873, and that the costs of this application be            .

Dated the            day of            , 18 .

**No. 33.**

[Heading as in Form 1.]

Order of re-  
ference under  
s. 57 of the  
Supreme  
Court of  
Judicature  
Act, 1872.

Upon hearing            and upon reading the affidavit of            filed the day of            18 , and            : It is ordered that the [state whether all or some, and if so which, of the questions are to be tried] in this action be tried by            , who shall have all the powers as to certifying and amending of a Judge of the High Court of Justice, and shall make his report of and concerning the matters ordered to be tried as aforesaid pursuant to the statute [or direct judgment to be entered and otherwise deal with the whole action pursuant to Order XXXVI., rule 50]. And it is further ordered that the said referee may, if he think fit, examine the parties to this action, and their respective witnesses, upon oath or affirmation, and that the said parties shall produce before the said referee all books, deeds, papers, and writings in their or either of their custody or power relating to the matters so ordered to be tried. And it is further ordered that neither the plaintiff nor the defendant shall bring or prosecute any action against the said referee, or against each other, of or concerning the matters so ordered to be tried, and that if either party by affected delay or otherwise wilfully prevent the said referee from making his report, he or they shall pay such costs to the other as the Court, or a Judge, may think reasonable and just. And it is further ordered, that in the event of the said referee

declining to act, or dying before he has made his report, the said parties may, or if they cannot agree, one of the Judges of the High Court may, upon application by either party, appoint a new referee. And it is ordered that the costs of this application be

Dated the            day of            , 18 .

[NOTE.—It is to be observed that this form empowers the referees to enter judgment or otherwise deal with the whole action. See now ss. 9 and 10 of S. C. Jud. Act, 1884, *ante*, p. 116.

These Forms of order of reference should be adhered to: *White v. Peto*, W. N. (1886), 165; *Baroness Wenlock v. River Dee Co.*, 19 Q. B. D. 155, per Fry, L. J., at p. 159. The order should state whether it is made under s. 56 or s. 57 of S. C. Jud. Act, 1873: *White v. Peto* (*ubi sup.*).]

**Appendix K.**  
**Nos. 33—36.**

**No. 34.**

[Heading as in Form 1.]

Upon hearing            , and upon reading the affidavit of            , filed the day of            , 18 , and            : It is ordered that this action [or the matters of account in this action, or the following questions in this action being matters of account, namely, *stating them*] be referred to the certificate of the Master, with all the powers as to certifying and amending of a Judge of the High Court of Justice, and that the costs of the            and of the reference be in the discretion of the Master, and that the costs of this application be

Order of  
reference to  
master.

Dated the            day of            , 18 .

[NOTE.—This order is under s. 3 of the C. L. P. Act, 1854, *ante*, p. 290.]

**No. 35.**

[Heading as in Form 1.]

Upon hearing            , and upon reading the affidavit of            , filed the day of            , 18 , and            : It is ordered that            , a witness on behalf of the            , be examined *exd voce* (on oath or affirmation) before the Master [or before            , esquire, special examiner], the solicitor or agent giving to the            solicitor or agent            notice in writing of the time and place where the examination is to take place. And it is further ordered that the examination so taken be filed in the Central Office of the Supreme Court of Judicature, and that an office copy or copies thereof may be read and given in evidence on the trial of this cause, saving all just exceptions, without any further proof of the absence of the said witness than the affidavit of the solicitor or agent of the            as to his belief, and that the costs of this application be

Order for  
examination  
of witnesses  
before trial.

Dated the            day of            , 18 .

**No. 36.**

[Heading as in Form 1.]

Upon hearing            , and upon reading the affidavit of            , filed the day of            , 18 , and            : It is ordered that the            be at liberty to issue a commission for the examination of witnesses on behalf at            . And it is further ordered that the trial of this action be stayed until the return of the said commission, the usual long order to be drawn up, and unless agreed upon by the parties within one week, to be settled by the Master [or as the case may be], and that the costs of this application be

Short order  
for issue of  
commission  
to examine  
witnesses.

Dated the            day of            , 18 .

Appendix K.  
No. 37.

## No. 37.

Long order  
for commission  
to examine  
witnesses.

[Heading as in Form 1.]

Upon hearing                      and upon reading the affidavit of                      filed the  
day of                      , 18                      , and                      : It is ordered as follows:—

1. A commission may issue directed to                      of                      and                      com-  
missioners named by and on behalf of the                      and to                      of                      and  
of                      commissioners named by and on behalf of the                      for  
the examination upon interrogatories and *vidâ voce* of witnesses on behalf of the  
said                      and                      respectively at                      aforesaid before the said com-  
missioners, or any two of them, so that one commissioner only on each side be  
present and act at the examination.

2. Both the said                      and                      shall be at liberty to examine upon  
interrogatories and *vidâ voce* upon the subject-matter thereof or arising out of  
the answers thereto such witnesses as may be produced on their behalf, with  
liberty to the other party to cross-examine the said witnesses upon cross inter-  
rogatories and *vidâ voce*, the party producing the witness for examination being  
at liberty to re-examine him *vidâ voce*; and all such additional *vidâ voce* questions,  
whether on examination, cross-examination, or re-examination, shall be reduced  
into writing, and, with the answers thereto, returned with the said commission.

3. Within                      days from the date of this order, the solicitors or agents of  
the said                      and                      shall exchange the interrogatories they propose to  
administer to their respective witnesses, and shall also within                      days from  
the exchange of such interrogatories, exchange copies of the cross-interrogatories  
intended to be administered to the said witnesses.

4.                      days previously to the sending out of the said commission, the  
solicitor of the said                      shall give to the solicitor of the said  
notice in writing of the mail or other conveyance by which the commission is to  
be sent out.

5.                      days previously to the examination of any witness on behalf of  
the said                      or                      respectively, notice in writing signed by any one of  
the commissioners of the party on whose behalf the witness is to be examined  
and stating the time and place of the intended examination, and the names of  
the witnesses intended to be examined, shall be given to the commissioners of  
the other party by delivering the notice to them personally, or by leaving it at  
their usual place of abode or business, and if the commissioners of that party  
neglect to attend pursuant to the notice, then one of the commissioners of the  
party on whose behalf the notice is given shall be at liberty to proceed with and  
take the examination of the witness or witnesses *ex parte*, and adjourn any  
meeting or meetings, or continue the same, from day to day until all the wit-  
nesses intended to be examined by virtue of the notice have been examined,  
without giving any further or other notice of the subsequent meeting or  
meetings.

6. In the event of any witness on his examination, cross-examination, or  
re-examination producing any book, document, letter, paper, or writing, and  
refusing, for good cause to be stated in his deposition, to part with the original  
thereof, then a copy thereof, or extract therefrom, certified by the commissioners  
or commissioner present to be a true and correct copy or extract, shall be  
annexed to the witnesses' deposition.

7. Each witness to be examined under the commission shall be examined on  
oath, affirmation, or otherwise in accordance with his religion by or before the  
said commissioners or commissioner.

8. If any one or more of the witnesses do not understand the English language  
(the interrogatories, cross-interrogatories, and *vidâ voce* questions, if any, being  
previously translated into the language with which he or they is or are con-  
versant), then the examination shall be taken in English through the medium  
of an interpreter or interpreters, to be nominated by the commissioners or com-  
missioner, and to be previously sworn according to his or their several religions  
by or before the said commissioners or commissioner truly to interpret the ques-  
tions to be put to the witness or witnesses, and his and their answers thereto.

9. The depositions to be taken under and by virtue of the said commission



shall be subscribed by the witness or witnesses, and by the commissioners or commissioner who shall have taken such depositions.

10. The interrogatories, cross-interrogatories, and depositions, together with any documents referred to therein, or certified copies thereof or extracts therefrom, shall be sent to the Senior Master of the Supreme Court of Judicature on or before the            day of           , or such further or other day as may be ordered, enclosed in a cover under the seal or seals of the said commissioners or commissioner, and office copies thereof may be given in evidence on the trial of this action by and on behalf of the said            and            respectively, saving all just exceptions, without any other proof of the absence from this country of the witness or witnesses therein named, than an affidavit of the solicitor or agent of the said            or            respectively, as to his belief of the           .

11. The trial of this cause is to be stayed until the return of the said commission.

12. The costs of this order, and of the commission to be issued in pursuance hereof, and of the interrogatories, cross-interrogatories, and depositions to be taken thereunder, together with any such document, copy, or extract as aforesaid, and official copies thereof, and all other costs incidental thereto, shall be

Dated the            day of           , 18   .

**No. 37a.**

[*Title and formal parts as in No. 36.*]

It is ordered that a letter of request do issue directed to the proper tribunal for the examination of the following witnesses, that is to say:

*E. F.* of  
*G. H.* of  
and *I. J.* of

Order for  
letter of re-  
quest to  
examine  
witnesses  
abroad.

And it is ordered that the depositions taken pursuant thereto when received be filed at the Central Office, and be given in evidence on the trial of this action, saving all just exceptions.

[NOTE.—See O. XXXVII., r. 6a, and note thereto, *ante*, p. 311.]

**No. 37b.**

Whereas an action is now pending in the            Division of the High Court of Justice in England, in which *A. B.* is plaintiff and *C. D.* is defendant. And in the said action the plaintiff claims

Request to  
examine  
witnesses.

(*endorsement upon writ.*)

And whereas it has been represented to the said Court that it is necessary for the purposes of justice and for the due determination of the matters in dispute between the parties, that the following persons should be examined as witnesses upon oath touching such matters, that is to say:

*E. F.* of  
*G. H.* of  
and *I. J.* of

And it appearing that such witnesses are resident within the jurisdiction of your Honourable Court:

Now I            as the President of the said            Division of the High Court of Justice have the honour to request, and do hereby request, that for the reasons aforesaid and for the assistance of the High Court of Justice, you as the President and Judges of the said            or some one or more of you, will be pleased to summon the said witnesses (and such other witnesses as the agents of the said plaintiff and defendant shall humbly request you in writing so to

**Appendix K.  
Nos. 37b—39.**

summon) to attend at such time and place as you shall appoint before some one or more of you, or such other person as according to the procedure of your Court is competent to take the examination of witnesses, and that you will cause such witnesses to be examined upon the interrogatories which accompany this letter of request (or *virâ voce*) touching the said matters in question in the presence of the agents of the plaintiff and defendant, or such of them as shall, on due notice given, attend such examination.

And I further have the honour to request that you will be pleased to cause the answers of the said witnesses to be reduced into writing, and all books, letters, papers, and documents produced upon such examination to be duly marked for identification, and that you will be further pleased to authenticate such examination by the seal of your tribunal, or in such other way as is in accordance with your procedure, and to return the same, together with such request in writing, if any, for the examination of other witnesses, through Her Majesty's Secretary of State for Foreign Affairs, for transmission to the said High Court of Justice in England.

**No. 38.**

Order for  
examination  
of judgment  
debtor.

18 . [Here put the letter and number.]

In the High Court of Justice.  
Division.

Between , Judgment Creditor,  
and  
, Judgment Debtor.

Upon hearing , and upon reading the affidavit of , filed the  
day of , 18 , and : It is ordered that the above-named  
judgment debtor attend and be orally examined as to whether any and what  
debts are owing to him, before in Chambers, at such time and place as  
he may appoint, and that the said judgment debtor produce his books [or as may  
be ordered] before the said at the time of the examination, and that  
the costs of this application be .

Dated the day of , 18 .

**No. 39.**

Garnishee  
order (attach-  
ing debt).

18 . [Here put the letter and number.]

In the High Court of Justice.  
Division.

in Chambers.  
Between Judgment Creditor,  
and  
Judgment Debtor,  
Garnishee.

Upon hearing , and upon reading the affidavit of , filed  
the day of , 18 , and : It is ordered that all  
debts owing or accruing due from the above-named garnishee to the above-  
named judgment debtor be attached to answer a judgment recovered against the  
said judgment debtor by the above-named judgment creditor, in the High Court  
of Justice on the day of , 18 , for the sum of £.  
on which judgment the said sum of £. remains due and unpaid. And  
it is further ordered that the said garnishee attend the in Chambers  
on day the day of , 18 , at o'clock  
in the noon, on an application by the said judgment creditor, that the  
said garnishee pay the debt due from him to the said judgment debtor, or so  
much thereof as may be sufficient to satisfy the judgment. And that the costs  
of this application be .

Dated the day of , 18 .

Appendix K.  
Nos. 40, 41.

No. 40.

18 . [*Here put the letter and number.*]

In the High Court of Justice.  
Division.

Garnishee  
order (absolute).

in Chambers.  
Between Judgment Creditor,  
and Judgment Debtor,  
Garnishee.

Upon hearing , and upon reading the affidavit of , filed  
the day of , 18 , and whereby it was ordered  
that all debts owing or accruing due from the above-named garnishee to the  
above-named judgment debtor should be attached to answer a judgment  
recovered against the said judgment debtor by the above-named judgment  
creditor in the High Court of Justice on the day of , 18 ,  
for the sum of £. , on which judgment the said sum of £.  
remained due and unpaid. It is ordered that the said garnishee do forthwith  
pay the said judgment creditor the debt due from him to the said judgment debtor  
(or so much thereof as may be sufficient to satisfy the judgment debt), and  
that in default thereof execution may issue for the same, and that the costs of  
this application be

Dated the day of , 18 .

No. 41.

18 . [*Here put the letter and number.*]

In the High Court of Justice.  
Division.

Order on  
client's appli-  
cation to tax  
solicitor's bill  
of costs.

in Chambers.

In the matter of the taxation of costs, and in the matter of , gentle-  
man, one of the solicitors of the Supreme Court.

It is ordered that the bill of fees, charges, and disbursements delivered to the  
applicant by the above-named solicitor be referred to the taxing-officer to be  
taxed, and that the said solicitor give credit for all sums of money by him re-  
ceived of or on account of the applicant, and that he refund what, if anything, he  
may on such taxation appear to have been overpaid. And it is further ordered  
that if the said solicitor attends on the taxation, the taxing-officer tax the costs  
of the reference, and certify what shall be found due to or from either party in  
respect of the bill and demand and of the costs of the reference, to be charged  
(if payable) according to the event of the taxation, pursuant to the statute.  
And it is further ordered that the said solicitor do not commence or prosecute  
any cause or matter touching the demand pending the reference. And it is fur-  
ther ordered that upon payment by the applicant of what (if anything) may  
appear to be due to the said solicitor the said solicitor do (if required) deliver up  
to the applicant, or as he may direct, all deeds, books, papers, and writings in  
the said solicitor's possession, custody, or power, belonging to the applicant.  
And it is ordered that the costs of this application be

Dated the day of 18 .

[NOTE.—See 6 & 7 Vict. c. 73, ss. 37 *et seq.*]



**Appendix K.  
Nos. 42—44.****No. 42.**18 . [*Here put the letter and number.*]

Order on  
solicitor's  
application  
to tax bill of  
costs.

In the High Court of Justice.  
Division.

in Chambers.

In the matter of the taxation of costs, and in the matter of , gentle-  
man, one of the solicitors of the Supreme Court.

Upon hearing , and upon reading the affidavit of , filed the  
day of , 18 , and : It is ordered that the above-  
named solicitor's bill of fees, charges, and disbursements, delivered to  
(hereinafter called the said client) be referred to the taxing-officer to be taxed,  
and that the said solicitor give credit for all sums of money by him received  
from or on account of the said client, and that he refund what, if anything, he  
may on such taxation appear to have been overpaid. And it is further ordered that  
the taxing-officer tax the costs of the reference, and certify what shall be found  
due to or from either party in respect of the bill and demand and of the costs of  
the reference, to be paid according to the event of the taxation pursuant to the  
statute. And it is further ordered that the said solicitor do not commence or  
prosecute any cause or matter touching the demand pending the reference. And  
it is further ordered that upon payment by the said client of what (if anything)  
may appear to be due to the said solicitor, the said solicitor do (if required)  
deliver to the said client, or as he may direct, all deeds, books, papers, and  
writings in the said solicitor's possession, custody, or power, belonging to the  
said client. And it is ordered that the costs of this application be .

Dated the day of 18 .

[NOTE.—See 6 & 7 Vict. c. 73, s. 37.]

**No. 43.**

[*Heading as in Form 1.*]

Order to tax  
after action  
brought.

Upon hearing , and upon reading the affidavit of , filed the  
day of , 18 , and : It is ordered that the plaintiff's  
bill of costs, charges, and disbursements delivered to the defendant, for the  
recovery of which this action is brought, be referred to the taxing-officer to be  
taxed, and that the plaintiff give credit at the time of taxation for all sums of  
money by him received from or on account of the defendant. And it is further  
ordered that the taxing-officer tax the costs of the reference, and certify what  
upon such reference shall be found due to or from either party in respect of the  
bill and demand, and of the costs of the reference, pursuant to the statute. And  
it is further ordered that the plaintiff do not prosecute this action touching the  
demand pending the reference. And it is further ordered that upon payment of  
what (if anything) may appear to be due to the plaintiff, together with the costs  
of this action (which are to be also taxed and paid), all further proceedings  
therein be stayed, and that the costs of this application be .

Dated the day of 18 .

**No. 44.**

[*Heading as in Form 1.*]

Order to try  
action in  
County Court.

Upon hearing , and upon reading the affidavit of , filed the  
day of , 18 , and : It is ordered that this action be  
tried before the County Court of , holden at , and that the costs  
of this application be .

Dated the day of 18 .

[NOTE.—See 30 & 31 Vict. c. 142, s. 7; S. C. Jud. Act, 1873, s. 67, *ante*,  
p. 49.]

No. 45.

[Heading as in Form 1.]

Upon hearing , and upon reading the affidavit of , filed the  
day of , 18 , and : It is ordered that unless the  
plaintiff within give full security for the defendant's costs to the satis-  
faction of the Master [or as the case may be], this action be remitted for trial  
before the County Court of , holden at , and that the costs of  
this application be .

Dated the day of , 18 .

[NOTE.—See 30 & 31 Vict. c. 142, s. 7, and s. 67 of S. C. Jud. Act, 1873,  
*ante*, p. 49.]

Appendix K.  
Nos. 45—47.

Order to give  
security or try  
action in  
County Court.

No. 46.

18 . [Here put the letter and number.]

In the High Court of Justice.  
Division.

Master in Chambers.  
Between Judgment Creditor,  
and  
Judgment Debtor.

Upon hearing , and upon reading the affidavit of , filed the  
day of , 18 , and : It is ordered that the above-named  
do attend before the Master on the day of next, at  
in the noon, to be examined upon oath touching his means of  
paying the judgment debt, and that the costs of this application be .

Dated the day of , 18 .

Order for  
examination  
touching  
means.

No. 47.

18 . [Here put the letter and number.]

In the High Court of Justice.  
Division.

Master in Chambers.  
Between Judgment Creditor,  
and  
Judgment Debtor.

Upon hearing , and upon reading the affidavit of , filed the  
day of , 18 , and : It is ordered that the above-named  
judgment debtor do pay to the above-named judgment creditor the sum of  
l., together with interest thereon at the rate of 4l. per centum per  
annum from the day of , 18 , the date of the judgment, and  
also l., the costs of this application, in manner following; namely [here  
describe the mode in which the payment is to be made].

Dated the day of , 18 .

[NOTE.—This and the next two following Orders are now practically obsolete,  
as debtors' summonses are now part of the bankruptcy business of the Queen's  
Bench Division. See note to O. LIV., r. 19, *ante*, p. 398.]

Order for  
payment  
of judgment  
debt by in-  
stalments.

## FORMS—SUMMONSES AND ORDERS.

**Appendix K.**  
**Nos. 48—50.**Order for  
committal of  
judgment  
debtor.In the High Court of Justice.  
Division.**No. 48.**18 . [*Here put the letter and number.*]Judge in Chambers.  
Between Judgment Creditor,  
and  
Judgment Debtor.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_, filed the day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is ordered that the above-named judgment debtor be, for default in payment of the debt hereinafter mentioned, committed to prison for the term of \_\_\_\_\_ from the date of his arrest, including the day of such date, or until he shall pay \_\_\_\_\_ l., being the amount due from him in pursuance of a judgment [*or order*] of the High Court of Justice, bearing date the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, together with interest thereon at 4l. per centum per annum from the aforesaid date, and 1l. 6s. 8d. for costs of this order, and sheriff's fees for the execution thereof; and it is further ordered that the sheriff take the said debtor for the purpose aforesaid if he is found within his bailiwick; and it is ordered that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

**No. 49.**18 . [*Here put the letter and number.*]Order for  
committal of  
judgment  
debtor on  
non-payment  
of instalment.In the High Court of Justice.  
Division.Judge in Chambers.  
Between Judgment Creditor,  
and  
Judgment Debtor.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_, filed the day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is ordered that the above-named judgment debtor be for default in payment of \_\_\_\_\_ l., being the amount of the [*first*] instalment of the judgment debt of \_\_\_\_\_ l. in this action directed to be paid pursuant to the order of \_\_\_\_\_ bearing date the day of \_\_\_\_\_, 18\_\_\_\_, committed to prison for the term of \_\_\_\_\_ from the date of his arrest, including the day of such date, or until he shall pay the said instalment together with 13s. 4d. the costs of this order, and sheriff's fees for the execution thereof; and it is further ordered that the sheriff of \_\_\_\_\_ take the said debtor for the purpose aforesaid if he is found in his bailiwick: And it is ordered that the costs of this application be

Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_.

[NOTE.—See O. LIV., r. 19, and note to No. 47.]

Interpleader  
Order, No. 1.In the High Court of Justice.  
Division.**No. 50.**18 . [*Here put the letter and number.*]in Chambers.  
Between \_\_\_\_\_ Plaintiff,  
and \_\_\_\_\_ Defendant,  
and between \_\_\_\_\_ Claimant,  
and \_\_\_\_\_ Respondent.

Upon hearing \_\_\_\_\_, and upon reading the affidavit of \_\_\_\_\_, filed the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, and \_\_\_\_\_: It is



ordered that the claimant be barred, that no action be brought against the above-named [sheriff] , and that the costs of this application be

Appendix K.  
Nos. 50—52.

Dated the                      day of                      , 18                      .

No. 51.

18 . [*Here put the letter and number.*]

Interpleader  
Order, No. 2.

In the High Court of Justice.  
Division.

in Chambers.

Between

Plaintiff,

and

Defendant,

and

Claimant.

Upon hearing                      , and upon reading the affidavit of  
filed the                      day of                      , 18                      , and                      : It is  
ordered that the above-named claimant be substituted as defendant in this  
action in lieu of the present defendant, and that the costs of this application  
be

Dated the                      day of                      , 18                      .

No. 52.

18 . [*Here put the letter and number.*]

Interpleader  
Order, No. 3.

In the High Court of Justice.  
Division.

in Chambers.

Between

Plaintiff,

and

Defendant,

and between

Claimant,

and the said                      , execution creditor, and  
the sheriff of

Respondents.

Upon hearing                      , and upon reading the affidavit of                      filed the  
day of                      , 18                      , and                      : It is ordered that the said sheriff  
proceed to sell the goods seized by him under the writ of *fiery facias* issued  
herein, and pay the net proceeds of the sale, after deducting the expenses  
thereof, into Court in this cause, to abide further order herein: And it is further  
ordered that the parties proceed to the trial of an issue in the High Court of  
Justice, in which the said claimant shall be the plaintiff and the said execution  
creditor shall be the defendant, and that the question to be tried shall be  
whether at the time of the seizure by the sheriff the goods seized were the  
property of the claimant as against the execution creditor: And it is further  
ordered that this issue be prepared and delivered by the plaintiff therein within  
from this date, and be returned by the defendant therein within  
days, and be tried at                      : And it is further ordered that the question of  
costs and all further questions be reserved until the trial of the said issue, and  
that no action shall be brought against the said sheriff for the seizure of the said  
goods.

Dated the                      day of                      , 18                      .

**Appendix K.**  
**Nos. 53—55.**

Interpleader  
Order, No. 4.

**No. 53.**

[*Heading as in Form 52.*]

Upon hearing, &c.

: It is ordered that upon payment of the sum of £ into Court by the said claimant within from this date, or upon his giving within the same time security to the satisfaction of the Master [*or as the case may be*] for the payment of the same amount by the said claimant according to the directions of any order to be made herein, and upon payment to the above-named sheriff of the possession money from this date, the said sheriff do withdraw from the possession of the goods seized by him under the writ of *feri facias* herein: And it is further ordered that unless such payment be made or security given within the time aforesaid the said sheriff proceed to sell the said goods, and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein: And it is further ordered that the parties proceed, &c.: And it is further ordered that this issue, &c.: And it is further ordered that the question of costs, &c.

Dated the            day of            , 18 .

---

**No. 54.**

[*Heading as in Form 52.*]

Interpleader  
Order, No. 5.

Upon hearing, &c.

: It is ordered that upon payment of the sum of £ into Court by the said claimant, or upon his giving security to the satisfaction of the Master [*or as the case may be*] for the payment of the same amount by the claimant according to the directions of any order to be made herein, the above-named sheriff withdraw from the possession of the goods seized by him under the writ of *feri facias* issued herein: And it is further ordered that in the meantime, and until such payment made or security given, the sheriff continue in possession of the goods, and the claimant pay possession money for the time he so continues, unless the claimant desire the goods to be sold by the sheriff, in which case the sheriff is to sell them and pay the proceeds of the sale, after deducting the expenses thereof and the possession money from this date, into Court in the cause, to abide further order herein: And it is further ordered that the parties proceed, &c.: And it is further ordered that this issue, &c.: And it is further ordered that the question of costs, &c.

Dated the            day of            , 18 .

---

**No. 55.**

[*Heading as in Form 52.*]

Interpleader  
Order, No. 6.

The claimant and the execution creditor having requested and consented that the merits of the claim made by the claimant be disposed of and determined in a summary manner, now upon hearing            and upon reading the affidavit of            , filed the            day of            , 18 , and            : It is ordered that            : And that the costs of this application be            .

Dated the            day of            , 18 .

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Appendix K.  
Nos. 56—58.

No. 56.

[Heading as in Form 52.]

Interpleader  
Order, No. 7.

Upon hearing , and upon reading the affidavit of , filed  
the day of , 18 , and : It is ordered that the above-  
named sheriff proceed to sell enough of the goods seized under the writ of *fiere  
facias* issued in this action to satisfy the expenses of the said sale, the rent (if  
any) due, the claim of the claimant, and this execution: And it is further  
ordered that out of the proceeds of the said sale (after deducting the expenses  
thereof, and rent, if any), the said sheriff pay to the claimant the amount of his  
said claim, and to the execution creditor the amount of his execution, and the  
residue, if any, to the defendant: And it is further ordered that no action be  
brought against the said sheriff, and that the costs of this application be .

Dated the day of , 18 .

No. 57.

[Heading as in Form 1.]

Order dismiss-  
ing summons  
(generally).

Upon hearing , and upon reading the affidavit of , filed  
the day of , 18 , and : It is ordered that the application  
of be dismissed\* with costs to be taxed and paid by the to  
the (or, and that the costs of and occasioned by this application be  
the 's in any event).

Dated the day of , 18 .

No. 58.

In the High Court of Justice.

In the matter of a bill of sale by to , dated the day  
of , 18 , and registered on the day of 18 . Let all  
parties concerned attend the Registrar of Bills of Sale at the Central Office,  
Royal Courts of Justice, London, on the day of , 18 , at  
o'clock in the noon, on the hearing of an application on the part of  
that satisfaction be entered on the above-mentioned bill of sale.

Summons for  
entry of satis-  
faction on a  
registered bill  
of sale.

Dated the day of , 18 .

This summons was taken out by of .

To .



## APPENDIX L.

Appendix L.  
Nos. 1—3.

## CHANCERY DIVISION.

## No. 1.

Summons by  
chief clerk.

In the High Court of Justice.  
Chancery Division.  
Mr. Justice

In the matter of the estate of *A. B.*, late of , in the county of , deceased.

Or,

Between *C. D.*, Petitioner,  
and  
*E. F.*, Defendant.

The defendant *E. F.* [*or, G. H.*, of, &c.] is hereby summoned to attend at the Chambers of Mr. Justice , at the Royal Courts of Justice, on the day of , at o'clock in the noon, to be examined, [*or to be examined as a witness*] on the part of the , for the purpose of the proceedings directed by Mr. Justice to be taken before me,

Dated this day of , 18 .

X. Y.,  
Chief Clerk.

This summons was taken out by of in the county of , solicitors for .

[NOTE.—See O. LV., r. 24, *ante*, p. 413.]

## No. 2.

Form of  
advertisement  
for claimants  
not being  
creditors.

Pursuant to a judgment [*or order*] of the Chancery Division of the High Court of Justice made in [the matter of the estate of , and in] an action by against , the persons claiming to be next of kin to [*or the heir of, as the case may be,*] , late of , in the county of , who died in or about the month of , are by their solicitors, on or before the day of , to come in and prove their claims at the Chambers of Mr. Justice , at the Royal Courts of Justice, or in default thereof they will be peremptorily excluded from the benefit of the said judgment [*or order*]. The day of , at o'clock in the noon, at the said Chambers, is appointed for hearing and adjudicating upon the claims.

Dated the day of , 18 .

A. B.,  
Chief Clerk.

[NOTE.—See O. LV., r. 47, *ante*, p. 419.]

## No. 3.

Form of  
advertisement  
for creditors.

Pursuant to a judgment [*or an order*] of the Chancery Division of the High Court of Justice made in [the matter of the estate of *A. B.*, and in] an action *S.* against *P.*, the creditors of *A. B.*, late of , in the county of , who died in or about the month of , 18 , are on or before the day of , 18 , to send by post prepaid, to *E. F.*, of , the

solicitor of the defendant *C. D.*, the executor [or administrator] of the deceased [or as may be directed] their Christian and surname, addresses and descriptions, the full particulars of their claims, a statement of their accounts, and the nature of the securities (if any) held by them, or in default thereof, they will be peremptorily excluded from the benefit of the said judgment [or order]. Every creditor holding any security is to produce the same before Mr. Justice at his Chambers, the Royal Courts of Justice, London, on the      day of      , 18      , at      o'clock in the      noon, being the time appointed for adjudication on the claims.

Dated this      day of      , 18      .

*G. H.*,  
Chief Clerk.

Appendix I.  
Nos. 3—5.

No. 4.

[Short Title.]

You are hereby required to produce in support of the claim sent in by you against the estate of *A. B.*, deceased [describe the document required to be produced], before Mr. Justice      , at his Chambers at the Royal Courts of Justice, London, on the      day of      , 18      , at      o'clock in the      noon.

Notice to  
creditor to  
produce  
documents.

Dated this      day of      , 18      .

*G. R.*, of &c., solicitor for plaintiff [or defendant, or as the case may be].

To Mr. *S. T.*

[NOTE.—See O. LV., r. 50, *ante*, p. 419.]

No. 5.

In the High Court of Justice.  
Chancery Division.  
Mr. Justice      .

Affidavit of  
executor or  
administrator  
as to claims of  
creditors.

[Title.]

We, *C. D.*, of, &c., the above-named plaintiff [or defendant, or as may be], the executor [or administrator] of *A. B.*, late of      , in the county of      , deceased, and *E. F.*, of, &c., solicitor, severally make oath and say as follows :

I, the said *E. F.*, for myself, say as follows :

1. I have in the paper writing now produced, and shown to me, and marked *A.*, set forth a list of all the claims the particulars of which have been sent in to me by persons claiming to be creditors of the said *A. B.*, deceased, pursuant to the advertisement issued in that behalf, dated the      day of      , 18      .

And I, the said *C. D.*, for myself say as follows :

2. I have examined the particulars of the several claims mentioned in the paper writing now produced, and shown to me, and marked *A.*, and I have compared the same with the books, accounts, and documents of the said *A. B.* [or as may be, and state any other inquiries or investigations made], in order to ascertain, so far as I am able, to which of such claims the estate of the said *A. B.* is justly liable.

3. From such examination [and state any other reasons] I am of opinion, and verily believe, that the estate of the said *A. B.* is justly liable to the amounts set forth in the sixth column of the first part of the said paper writing, marked *A.*, and to the best of my knowledge and belief, such several amounts are justly due from the estate of the said *A. B.*, and proper to be allowed to the respective claimants named in the said schedule.

4. I am of opinion that the estate of the said *A. B.* is not justly liable to the claims set forth in the second part of the said paper writing, marked *A.*, and

**Appendix L.**  
**Nos. 5, 6.**

that the same ought not to be allowed without proof by the respective claimants [or, I am not able to state whether the estate of the said *A. B.* is justly liable to the claims set forth in the second part of the said paper writing, marked *A.*, or whether such claims, or any parts thereof, are proper to be allowed without further evidence].

5. Except as hereinbefore mentioned, there are not, to the best of my knowledge, information and belief, any other claims against the estate of the said *A. B.*

Sworn, &c.

[NOTE.—See O. LV., r. 52, *ante*, p. 420.]

**No. 6.**  
**A.**

[*Short Title.*]

Exhibit referred to in Affidavit, No. 5.

List of claims, the particulars of which have been sent in to *E. F.*, the solicitor of the plaintiff [or defendant, or as may be], by persons claiming to be creditors of *A. B.* deceased, pursuant to the advertisement issued in that behalf, dated the                      day of                      , 18                      .

This paper writing marked *A.* was produced and shown to                      , and is the same as is referred to in his affidavit sworn before me this                      day of                      , 18                      .

*W. B.*, &c.

**FIRST PART.—Claims proper to be allowed without further evidence.**

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount claimed.	Amount proper to be allowed.
				£ s. d.	£ s. d.

**SECOND PART.—Claims which ought to be proved by the Claimants.**

Serial No.	Names of Claimants.	Addresses and Descriptions.	Particulars of Claim.	Amount Claimed.
				£ s. d.

[NOTE.—See O. LV., r. 52, *ante*, p. 420.]



## No. 7.

[Short Title.]

The claim sent in by you against the estate of *A. B.*, deceased, has been allowed at the sum of £, with interest thereon at % per cent. per annum, from the day of , 18 , and £. for costs.

[If part only allowed, add, If you claim to have a larger sum allowed, you are hereby required to prove such further claim, and you are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of , 18 next, and to attend by your solicitor at the Chambers of Mr. Justice at the Royal Courts of Justice on the day of , 18 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of , 18 .

*G. R.*, of, &c., solicitor for the plaintiff [or defendant, or as may be].

To Mr. *P. R.*

[NOTE.—See O. LV., r. 56, *ante*, p. 421.]

Appendix L.  
Nos. 7—10.

Notice to  
creditor of  
allowance of  
claim.

## No. 8.

[Short Title.]

You are hereby required to prove the claim sent in by you against the estate of *A. B.*, deceased. You are to file such affidavit as you may be advised in support of your claim, and give notice thereof to me on or before the day of next, and to attend by your solicitor at the Chambers of Mr. Justice at the Royal Courts of Justice on the day of , 18 , at o'clock in the noon, being the time appointed for adjudicating on the claim.

Dated this day of , 18 .

*G. R.*, of, &c., solicitor for the plaintiff [or defendant, or as may be].

To Mr. *S. T.*

[NOTE.—See O. LV., r. 56, *ante*, p. 421.]

Notice to  
creditor to  
prove his  
claim.

## No. 9.

[Short Title.]

The cheques for the amounts directed to be paid to the creditors of *A. B.*, deceased, by an order made in this [matter and] action dated the day of , 18 , may be received at the Paymaster-General's office on and after the day of , 18 .

*G. R.*, of, &c., solicitor for the plaintiff [or defendant, or as may be].

To Mr. *W. S.*

[NOTE.—See O. LV., r. 60, *ante*, p. 422, and Rules 47 to 50 of the Funds Rules of 1886, *post*, pp. 739—741.]

Notice that  
cheques may  
be received.

## No. 10.

[Title.]

In pursuance of the directions given to me by Mr. Justice , I hereby certify that the result of the accounts and inquiries which have been taken and

Certificate of  
Chief Clerk.

**Appendix L.** made in pursuance of the judgment [*or order*] in this cause dated the  
**Nos. 10, 11.** day of is as follows :

1. The defendants the executors of the testator, have received personal estate to the amount of £. and they have paid or are entitled to be allowed on account thereof, sums to the amount of £. having a balance due from [*or to*] them of £. on that account.

The particulars of the above receipts and payments appear in the account marked verified by the affidavit of filed on the day of , and which account is to be filed with this certificate, except that in addition to the sums appearing on such account to have been received, the said defendants are charged with the following sums [*state the same here or in a schedule*] and except that I have disallowed the items of disbursement in the said account numbered , and .

[*Or in cases where a transcript has been made.*]

The defendants have brought in an account verified by the affidavit of , filed on the day of and which account is marked and is to be filed with this certificate. The account has been altered, and the account marked and which is also to be filed with this certificate, is a transcript of the account as altered and passed.

2. The debts of the testator which have been allowed are set forth in the Schedule hereto, and with the interest thereon and costs mentioned in the Schedule are due to the persons therein named, and amount altogether to £.

3. The funeral expenses of the testator amount to the sum of £. which I have allowed the said executors in the said account of personal estate.

4. The legacies given by the testator are set forth in the Schedule hereto, and with the interest therein mentioned remain due to the persons therein named, and amount altogether to £.

5. The outstanding personal estate of the testator consists of the particulars set forth in the Schedule hereto.

6. The real estate to which the testator was entitled consists of the particulars set forth in the Schedule hereto.

7. The defendants have received rents and profits of the testator's real estate, &c. [*in a form similar to that provided with respect to the personal estate*].

8. The incumbrances affecting the said testator's real estate are specified in the Schedule hereto.

9. The real estates of the testator directed to be sold have been sold, and the purchase-moneys amounting altogether to £. have been paid into Court.

N.B.—The above numbers are to correspond with the numbers in the order after each statement. The evidence produced is to be stated as follows :—

The evidence produced on this account [*or inquiry*] consists of the probate of the testator's will, the affidavit of A. B., filed and paragraph numbered of the affidavit of C. D., filed.

[NOTE.—See O. LV., r. 67, *ante*, p. 424.]

## No. 11.

Affidavit  
 verifying  
 accounts and  
 answering  
 usual inquiries  
 as to real and  
 personal  
 estate.

In the High Court of Justice.  
 Chancery Division.

Mr. Justice

[*Title.*]

We, A.B., of, &c., C.D., of, &c., and E.F., of, &c.,  
 the above-named defendants, severally make oath and say as follows :—

1. We have, according to the best of our knowledge, information, and belief, set forth in Schedule I. hereto a full account and inventory of the personal estate of or to which G.H. , the testator in the judgment [*or order*]

dated \_\_\_\_\_, made in this action [*or matter*] named, who died on the \_\_\_\_\_ day of \_\_\_\_\_, was possessed or entitled at the time of his death, and not by him specifically bequeathed.

Appendix L.  
No. 11.

2. Save what is set forth in the said Schedule I., and what is by the said testator specifically bequeathed, the said testator was not, to the best of our knowledge, information or belief, at the time of his death possessed of or entitled to any debt or sum of money due to him from us or any of us on any account whatsoever, nor to any leasehold or other personal estate whatsoever (a).

3. The said testator's funeral expenses have been paid. The same consist of the items of disbursement numbered \_\_\_\_\_ and \_\_\_\_\_ in the account hereinafter referred to [*or if not paid, it should be so stated with the amount due and to whom due*].

4. We have in the account marked A., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of the personal estate of the said testator, not by him specifically bequeathed, which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use or the use of any of us, with the times when, the names of the persons from whom, and on what account the same has been received, and also a like account of the disbursements, allowances, and payments made by us or any of us on account of the said testator's funeral expenses, debts, and personal estate, together with the times when the names of the persons to whom, and the purposes for which the same were disbursed, allowed, or paid (b).

5. And we, each speaking positively for himself and to the best of his knowledge and belief as to other persons, further say that except as appears in the said account marked A., we have not, nor has any of us, nor have nor has any other person or persons by our order or the order of any of us, or for our use or the use of any of us, possessed, received, or got in any part of the said testator's personal estate, nor any money in respect thereof, and that the said account marked A. does not contain any item of disbursement, allowance or payment, other than such as has actually been disbursed, paid, or allowed on the account aforesaid.

6. To the best of our knowledge, information, and belief, the personal estate of the said testator, now outstanding or undisposed of, consists of the particulars set forth in Schedule II. hereto.

7. Save what is set forth in the Schedule II., there is not to our knowledge, information, or belief, any part of the said testator's personal estate now outstanding or undisposed of.

8. We have according to the best of our knowledge, information, and belief, set forth in Schedule III. hereto the particulars of all the real estate which the said G.H. was seised of or entitled to at the date of his death.

9. Save what is set forth in the said schedule, the said testator was not, to the best of our knowledge, information, or belief, at the time of his death seised of or entitled to any real estate whatsoever.

10. We have according to the best of our knowledge, information, and belief, set forth in Schedule IV. hereto the particulars of all the incumbrances affecting the said testator's real estate, and what part thereof such incumbrances respectively affect.

11. We have in the account marked B., now produced and shown to us, according to the best of our knowledge, information, and belief, set forth a full account of all the rents and profits of the said testator's real estate which has come to our hands or to the hands of any of us, or to the hands of any person or persons by our order, or the order of any of us, or for our use, or the use of any of us, and the times when, the names of the persons from whom, on what account, in respect of what part of such estate the same have been received, and the times when the same became due, and also a like account of the disburse-

(a) The words in *italics* to be inserted only where the direction is to take an account of personal estate not specifically bequeathed.

(b) This should accord with the order directing the account.



**Appendix L.**  
**No. 11.**

ments, allowances, and payments made by us, or any or either of us, in respect of the said testator's real estate, or the rents and profits thereof, and the times when, the names of the persons to whom, and the purposes for which, the same were made (c).

12. And we, each speaking positively for himself, and to the best of his knowledge and belief as to other persons, further say that, except as appears in the said account marked B., we have not, nor has any of us, nor has any other person by our order, or the order of any of us, or for our use, or the use of any of us, possessed, received, or got in any rents or profits of the said testator's real estate, nor any money in respect thereof, and that the said account marked B. does not contain any item of disbursement, payment, or allowance, other than such as has actually been disbursed, paid, or allowed, as above stated.

---

The FIRST SCHEDULE above referred to.

1. 50*l.* cash in the house.
2. 100*l.* cash at the testator's bankers, Messrs. *A.* and *B.*
3. 1,000*l.* consolidated 3*l.* per cent. annuities, standing in the testator's name.
4. 10*l.* due from John James, for half year's rent of house at \_\_\_\_\_, to Michaelmas, 1882.
5. 32*l.* 6*s.* 8*d.* balance remaining due from John Thomas on account of half year's rent of farm at \_\_\_\_\_, to Michaelmas, 1882.
6. 300*l.*, a debt due from Samuel Jones on a bond, with interest from \_\_\_\_\_, at \_\_\_\_\_ per cent.
7. A leasehold house situate at \_\_\_\_\_, held under a lease for a term of \_\_\_\_\_, which will expire on \_\_\_\_\_, at a rent of \_\_\_\_\_ *l.* a year, underlet to James Evans for a term which will expire on \_\_\_\_\_, at a rent of 50*l.* a year.
8. 25*l.*, half a year's rent due from the said James Evans to \_\_\_\_\_.

---

The SECOND SCHEDULE above referred to.

[The particulars to be set forth in the same manner as above.]

---

The THIRD SCHEDULE above referred to.

[To contain a short particular of the real estate.]

---

The FOURTH SCHEDULE above referred to.

[To contain a short particular of the incumbrances, and showing what part of the above real estate is subject to each.]

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(c) This should accord with the order directing the account.

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## No. 12.

A.

In the High Court of Justice.  
Chancery Division.

Mr. Justice

[Title.]

This account marked A. was produced and shown to *A. B.*, *C. D.*, and *E. F.*,  
and is the account referred to in their affidavit sworn this      day of

Before me [*to be signed here by Commissioner or officer before whom the affidavit  
is sworn*].

Appendix L.  
No. 12.

Account of  
personal  
estate, being  
account A.  
referred to  
in Form  
No. 11.

## RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account received.	Amount received.
	18 .			£ s. d.
1			Found in house.	
2		Evans and Co. ....	Balance at bankers.	
3			Half-year's dividend on 2,000 <i>l.</i> 3 <i>l.</i> per cent. annuities due.	
4		John James ....	Bond debt of 300 <i>l.</i> and interest from to	
5		Samuel Jones ....	Bond debt of 300 <i>l.</i> and interest from to	
6		James Evans ....	Half-year's rent of leasehold house due	
7		William Williams .	Produce of sale of the above leasehold house.	

## DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what purpose paid or allowed.	Amount paid or allowed.
	18 .			£ s. -d.
1		James Price .....	Undertaker's bill for funeral.	
2		Messrs. A. & B. ..	Expenses of probate.	
3		John George.....	A debt due to him for medical attendance.	
4		James Price .....	Bond debt of 1,000 <i>l.</i> and 25 <i>l.</i> for interest thereon from to	

## FORMS—CHANCERY DIVISION.

**Appendix L.**  
**No. 13.****No. 13.**

B.

Account of  
rents and  
profits, being  
the account B.  
referred to in  
No. 11.In the High Court of Justice.  
Chancery Division.

Mr. Justice

[Title.]

This account marked B. was produced and shown to *A. B., C. D. and E. F.*,  
and is the account referred to in their affidavit sworn this       day of       .Before me [*to be signed here by Commissioner or officer before whom affidavit  
sworn*].

## RECEIPTS.

No. of Item.	Date when received.	Names of Persons from whom received.	On what Account and in respect of what Part of the Estate received, and when due.	Amount received.
1	18 .	John James .....	Half-year's rent for farm in parish of due .....	£ s. d.
2		Thomas James ..	One quarter-year's rent of house at due .....	
3		John James ....	Same as No. 1, due ..	

## DISBURSEMENTS.

No. of Item.	Date when paid or allowed.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.	Amount paid or allowed.
1	18 .	Sun Insurance Office .....	One year's insurance against fire, due .....	£ s. d.
2		Thomas Carpenter	Repairs at John James' farm	
3		James Francis ..	Income tax, half-year due 10th October .....	



## No. 14.

## RECEIVER'S ACCOUNT.

[Title.]

(To accord with the Order.) The [ ] Account of A. B., the Receiver appointed in this cause [or pursuant to] an order made in this cause, dated the [ ] day of [ ] to receive the rents and profits of the real estate, and to collect and get in the outstanding personal estate of C. D., the testator [or intestate] in this cause, named from the day of [ ] to the day of [ ]

## REAL ESTATE—RECEIPTS.

No. of Item.	Date when received.	Tenants' Names.	Description of Premises.	Annual Rent.	Arrears due at .	Amount due at .	Amount received.	Arrears remaining due.	Observations.
1		John Jones . . .	Home Farm in the Parish of Norton, in the County of Oxford.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	£ s. d.	
2		Thomas Jones . .	House at Norton, aforesaid.						

Appendix L.  
No. 14.

Appendix L.  
No. 14.

### PAYMENTS AND ALLOWANCES ON ACCOUNT OF REAL ESTATE.

No. of Item.	Date of Payment or Allowance.	Names of Persons to whom paid or allowed.	For what Purpose paid or allowed.			Amount.	
						£	s. d.
1		Sun Fire Office .....	One year's insurance of, due ..				
2		Thomas Carpenter .....	Bill for repairs at house let to Thomas Jones .....				
3		James Francis .....	Allowance for a half-year's income tax, due .....				
			Total payments .....	£			

## RECEIPTS ON ACCOUNT OF PERSONAL ESTATE.

### PAYMENTS AND ALLOWANCES ON ACCOUNT OF PERSONAL ESTATE.

[illegible]

SUMMARY.

Amount of balance due from receiver on account of real estate on last account .....	£	s.	d.	£	s.	d.
Amount of receipts on the above account of real estate..	"	"	"	"	"	"
	£	s.	d.			
Balance of last account paid into Court....	"	"	"			
Amount of payments and allowances on the above account of real estate .....	"	"	"			
Amount of receiver's costs of passing this account as to real estate .....	"	"	"			

Balance due from the receiver on account of real estate....£

Amount of balance due from receiver on last account of personal estate .....	"	"				
Amount of receipts on the above account of personal estate .....	"	"				
	£	s.	d.			
Balance of last account paid into Court....	"	"	"			
Amount of payments and allowances on the above account of personal estate .....	"	"	"			
Amount of receiver's costs of passing this account as to personal estate .....	"	"	"			

Balance due from the receiver on account of personal estate..£

No. 15.

Conditions of Sale.

Ordinary conditions of sale.

1. No person is to advance less than £                      at each bidding.
2. The sale is subject to a reserved bidding for each lot which has been fixed by the Judge to whom this cause is assigned.
3. Each purchaser is at the time of sale to subscribe his name and address to his bidding and the abstract of title, and all written notices and communications and summonses are to be deemed duly delivered to and served upon the purchaser by being left for him at such address, unless or until he is represented by a solicitor.
4. Each purchaser is at the time of sale to pay a deposit of £                      per cent. on the amount of his purchase-money to                      , the person appointed by the said Judge to receive the same.
5. The Chief Clerk of the said Judge will after the sale proceed to certify the result, and                      the                      day of                      , at                      of the clock noon is appointed as the time at which the purchasers may, if they think fit,



**Appendix L.**  
**No. 15.**

attend by their solicitors at the Chambers of the said Judge at the Royal Courts of Justice, London, to settle such certificate. The certificate will then be settled, and will in due course be signed and filed, and become binding without further notice or expense to the purchasers.

6. The vendor is within [ ] days after such certificate has become binding to deliver to each purchaser, or his solicitor, an abstract of the title to the lot or lots purchased by him, subject to the stipulations contained in these conditions. And each purchaser is, within four days after the actual delivery of the abstract, to deliver at the office of [ ] solicitor, at [ ] in the county of [ ], a statement in writing of his objections and requisitions (if any) to or on the title as deduced by such abstract, and upon the expiration of such last-mentioned time—and in this respect time is to be deemed of the essence of the contract—the title is to be considered as approved of and accepted by such purchaser, subject only to such objections and requisitions, if any.

7. Each purchaser is, in addition to the amount of his bidding at the sale, to pay the value of all timber and timber-like trees, tellers, and pollards, if any, on the lot purchased by him, down to 1s. per stick, inclusive, the amount thereof to be ascertained by a valuation to be made in manner following; that is to say, each party (vendor and purchaser), or their respective solicitors, is within [ ] days after the Chief Clerk's certificate has become binding to appoint by writing one valuer, and give notice in writing to the other party of such appointment, and the valuers so appointed are to make such valuation, but before they commence their duty they are to appoint an umpire by writing, and the decision of such valuers if they agree, or of such umpire if they disagree, is to be final; and in case the purchaser shall neglect or refuse to appoint a valuer, and give notice thereof in the manner and within the time above specified, the valuation is to be made by the valuer appointed by the vendor alone, and his valuation is to be final.

To be altered  
if the 4th or  
7th condition  
not inserted.

8. Each purchaser is under an order for that purpose to be obtained by him, or in case of his neglect by the vendors at the costs of the purchaser, upon application at the Chambers of the said Judge, to pay the amount of his purchase-money (after deducting the amount paid as a deposit), together with the amount of the valuation under the seventh condition, if any, into Court to the credit of this cause [ ] on or before the said [ ] day of [ ], and if the same is not so paid, then the purchaser is to pay interest on his purchase-money, including the amount of such valuation, at the rate of £ [ ] per cent. per annum from the [ ] day of [ ] to the day on which the same is actually paid. Upon payment of the purchase-money in manner aforesaid, the purchaser is to be entitled to possession, or to the rents and profits, as from the [ ] day of [ ], down to which time all outgoings are to be paid by the vendors.

This is to be in  
accordance  
with the order  
directing the  
sale.

9. If any error or mis-statement shall appear to have been made in the above particulars, such error or mis-statement is not to annul the sale or entitle the purchaser to be discharged from his purchase, but a compensation is to be made to or by the purchaser, as the case may be, and the amount of such compensation is to be settled by the said Judge at Chambers.

[Add to these such conditions respecting the title and title deeds as the conveying counsel shall advise to be necessary or proper.]

Lastly. If the purchaser shall not pay his purchase-money at the time above specified, or at any other time which may be named in any order for that purpose, and in all other respects perform these conditions, an order may be made by the said Judge upon application at Chambers for the re-sale of the lot purchased by such purchaser, and for payment by the purchaser of the deficiency, if any, in the price which may be obtained upon such resale, and of all costs and expenses occasioned by such default.

Appendix L.  
No. 16.

No. 16.

In the High Court of Justice.  
Chancery Division.

Certificate of  
result of sale.

I, *A. B.*, of \_\_\_\_\_, auctioneer, the person appointed to sell the estate comprised in the particulars hereinafter referred to, hereby certify as follows :—

1. I did at the time and place, in the lots, and subject to the conditions specified in the said particulars and conditions of sale hereto annexed and marked *A.*, put up for sale by auction the estates described in the said particulars.

The result of the sale is truly set forth in the bidding paper hereto annexed and marked *B.*

2. I have received the sums set forth in the fourth column of the schedule hereto as deposits from the respective purchasers whose names are set forth in the second column of the said schedule opposite the said sums in respect of their purchase-money, leaving the sums set forth in the fifth column of the said schedule due in respect thereof.

The SCHEDULE above referred to.

No. of Lot.	Name of Purchaser.	Amount of Purchase Money.	Amount of Deposit received.	Amount remaining Due.

(Signed) *A. B.*,  
Auctioneer.

To the best of my belief the above certificate is correct.

(Signed) *C. D.*,  
The solicitor for the party having the  
conduct of the above-mentioned sale.

[NOTE.—See O. LI., r. 6A, *ante*, p. 384.]

Appendix L.  
No. 17.

No. 17.

*List of Debts allowed.*

James v. Jones.

List of Debts.

No. of Entry of Claim.	Names of Creditors.	Addresses.	Amounts allowed for Principal, Interest and Costs.	Total Amounts Due.
2	James Allen ..	Boston, in the county of Lincoln, Surgeon ....	£ s. d. 100 0 0	106 2 0
		Interest .....	4 0 0	
		Costs .....	2 2 0	
1	Charles Cohen..	98, Piccadilly, in the county of Middlesex, Gentleman, executor of John Thomas.....	67 0 0	73 4 0
		Interest from 5th Octo- ber, 1850, at £5 per cent. ....	4 2 0	
		Costs .....	2 2 0	
5	John Dennis and Owen Thomas.	16, Fleet Street, Lon- don, Grocers, and co- partners .....	100 0 0	171 14 6
		Interest from 16th Oc- tober, 1852, at £5 per cent. ....	5 0 0	
		Another debt .....	62 0 0	
		Interest.....	2 10 0	
		Costs .....	2 4 6	



## No. 18.

Appendix L.  
Nos. 18, 19.*List of Legacies remaining unpaid.*

James v. Jones.

List of Legacies.

Names of Legatees.	Descriptions.	Amounts of Principal and Interest.	Total Amounts Due.
		£ s. d.	£ s. d.
James Oliver ....	Son of testator, an infant	100 0 0	
	Interest .....	7 5 6	107 5 6
Mary Russell ....	Of 20, Cheapside, London, Widow .....	50 0 0	
	Interest from 1st January, 1850, the death of testator .....	4 8 0	54 8 0
Jane, the wife of } John Williams }	Of Lincoln, Esq. ....	250 0 0	
	Paid in part .....	50 0 0	
		200 0 0	
	Interest .....	14 11 0	214 11 0
		Total..£	

## No. 19.

*List of Annuities and Arrears due.*

List of Annuities.

Names of Annuitants.	Description of Annuitants and Nature of Annuitants.	Amounts of Annuities.	Amounts of Arrears Due.
		£ s. d.	£ s. d.
Mary Jones .....	Spinster, daughter of testator during her life ..	50 0 0	25 0 0
Maria Williams ..	Widow of testator, during her life and widowhood	200 0 0	
	Arrears due from 7th August, 1882, down to which it has been paid..	....	300 0 0
	Totals.....£		£

Appendix I.  
Nos. 20, 21.

No. 20.

List of Apportionments among Creditors or Legatees.  
Apportionment among Creditors (or Legatees).

Names of Creditors (or Legatees).	Addresses.	Amounts before certified to be due and subsequent Interest.	Totals due.	Amounts apportioned.
		£ s. d.	£ s. d.	£ s. d.
John Jones ..	20, Cheapside, London, woollen draper	200 0 0	217 10 0	57 4 8
	Subsequent interest..	17 10 0		
Thomas Young and Robert Young ....	Braintree, in the county of Essex, executors of William Young, deceased ..	200 0 0	217 10 0	57 4 8
	Subsequent interest	17 10 0		
			Total..£	

No. 21.

Receiver's Recognizance.

of , of , and ,

Before our Sovereign Lady the Queen in her High Court of Justice personally appearing, do acknowledge themselves, and each of them doth acknowledge themselves, to owe to Sir and Sir , two of the Chief Clerks of the Chancery Division, the sum of , to be paid to the said and , or one of them, or the executors or administrators of them, or one of them, and unless they do pay the same, they, the said , do grant, and each of them doth grant for himself, his heirs, executors, and administrators, that the said sum of shall be levied, recovered, and received, of and from them and each of them, and of and from all and singular the manors, messuages, lands, tenements, and hereditaments, goods and chattels of them and each of them, wheresoever the same shall or may be found. Witness our said Sovereign Lady Victoria, by the Grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, and so forth, at the Royal Courts of Justice, the day of 18 .

Whereas, by an order of the High Court of Justice made in a cause wherein are plaintiffs, and defendants, and dated the day of

It was ordered that a proper person should be appointed to receive [or that upon the above bounden first giving security he should be appointed receiver of] the rents and profits of the real estate, and to collect and get in the outstanding personal estate of in the said order named. And whereas the Judge to whom this cause is assigned hath [approved of the said as a proper person to be such receiver, and hath] approved of the above bounden and as sureties for the said , and hath also approved of the above-written recognizance with the under-written condition as a proper security to be entered into by the said and , pursuant to the said order and the general orders of the said Court in that behalf, and in

v.  
Mr. Justice , the Judge to whose Court this cause is attached, has approved of and allowed this recognizance.  
Chief Clerk.

testimony of such approbation the Chief Clerk of the said Judge hath signed an allowance in the margin hereof.

Appendix L.  
Nos. 21—23.

Now the condition of the above-written recognizance is such that if the said do and shall duly account for all and every the sum and sums of money which he shall so receive on account of the rents and profits of the real estate, and in respect of the personal estate of the said , at such periods as the said Judge shall appoint, and do and shall duly pay the balances which shall from time to time be certified to be due from him as the said Court or Judge hath directed or shall hereafter direct, then the above recognizance shall be void and of none effect, otherwise the same is to be and remain in full force and virtue.

Taken and acknowledged by the above-named, &c.

No. 22.

*Affidavit verifying Receiver's Report.*

Affidavit verifying receiver's report.

In the High Court of Justice.

Chancery Division.

Mr. Justice

[Title.]

I, , of , the receiver appointed in this cause, make oath and say as follows:

1. The account marked with the letter A. produced and shown to me at the time of swearing this my affidavit, and purporting to be my account of *the rents and profits of the real estate and of the outstanding personal estate of* , the testator [or intestate] in this cause, from the day of , 18 , to the day of , 18 , both inclusive, contains a true account of all and every sum of money received by me or by any other person or persons by my order or, to my knowledge or belief, for my use on account, or in respect of the said rents and profits accrued due on or before the said day of on an account or in respect of the said personal estate, except what is included as received in my former account [or accounts] sworn by me.

2. The several sums of money mentioned in the said account, hereby verified to have been paid and allowed, have been actually and truly so paid and allowed for the several purposes in the said account mentioned.

3. The said account is just and true in all and every the items and particulars therein contained, according to the best of my knowledge and belief.

4. W.X. and Y.Z. , the sureties named in the recognizance dated the , of , 18 , are both alive, and neither of them has become bankrupt or insolvent.

[NOTE.—See O. L., r. 22A, ante, p. 381.]

No. 23.

In the High Court of Justice.

Chancery Division.

Mr. Justice

[Title.]

Affidavit verifying abstract.

I, A. B., of, &c. solicitor for , in this cause [or matter], make oath and say as follows:

I have carefully examined and compared the abstract written on sheets of paper, now produced and shown to me at the time of swearing this affidavit, and marked with the letter A., with the several deeds and documents thereby purporting to be abstracted. Such abstract is a true and correct abstract of the said deeds and documents, so far as such deeds and documents relate to the hereditaments referred to in an order made in this action [or matter] dated the day of .



Appendix L.  
Nos. 24—26.

**Affidavit verifying engrossment of deeds.**

In the High Court of Justice.  
Chancery Division.  
Mr. Justice

No. 24.

[Title.]

I, *A. B.*, of, &c. , make oath and say as follows:

1. I have carefully examined and compared the parchment writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter A., with the draft or paper writing now produced and shown to me at the time of swearing this affidavit, and marked with the letter B., being the draft of the conveyance [or settlement, &c.] settled at Chambers of the Judge to whom this cause [or matter] is assigned pursuant to the order made in this cause [or matter] dated . . .

2. The said parchment writing is a true and correct transcript and engrossment of the said draft.

No. 25.

Originating  
summons.

In the High Court of Justice.  
Chancery Division.  
Mr. Justice

In the matter of the estate of *A.B.*, deceased.

Between *C.D.*, Plaintiff,  
and  
*E.F.*, Defendant.

Let *E.F.*, the executor of the said *A.B.*, attend at the Chambers of Mr. Justice \_\_\_\_\_, at the Royal Courts of Justice at the time specified in the margin [*or, at the foot*] hereof, upon the application of *C.D.*, of \_\_\_\_\_, Esq., who claims to be a creditor [*or, as the case may be*] upon the estate of the above-named *A.B.* for an order for the administration of the personal [*or real and personal*] estate of the said *A.B.*

Dated the                      day of                      , 18                      .

(Seal.)

This summons was taken out by \_\_\_\_\_, of \_\_\_\_\_, solicitors for the above-named *C. D.*

The following note to be added to the original summons, and when the time is altered by indorsement the indorsement to be referred to as below:—

NOTE.—If you do not attend either in person or by your solicitor at the time and place above mentioned [or at the place above-mentioned at the time mentioned in the indorsement hereon], such order will be made and proceedings taken as the Judge may think just and expedient.

[NOTE.—See O. LV., r. 20, and the general regulation as to the issue of summons set out in the note, *ante*, p. 411.]

No. 26.

Request to set  
down cause  
for further  
consideration.

In the High Court of Justice.  
Chancery Division.  
Mr. Justice

A. v. B.

I request that this cause, the further consideration whereof was adjourned by order of the \_\_\_\_\_ day of \_\_\_\_\_, may be set down for further consideration before Mr. Justice \_\_\_\_\_ C. D.,  
plaintiff's [or defendant's] solicitor.

[NOTE.—See O. XXXVI., r. 21, *ante*, p. 296.]

## No. 27.

Appendix L.  
Nos. 27, 28.

In the High Court of Justice.  
Chancery Division.  
Mr. Justice

Notice that  
cause has been  
set down for  
further con-  
sideration.

A. V. B.

Take notice that this cause, the further consideration whereof was adjourned by the order of the \_\_\_\_\_ day of \_\_\_\_\_, was on the \_\_\_\_\_ day of \_\_\_\_\_, set down for further consideration before Mr. Justice \_\_\_\_\_, for the \_\_\_\_\_ day of \_\_\_\_\_.

Dated, &c.

*C. D.,*  
Solicitor for

To Mr. \_\_\_\_\_,  
Solicitor for \_\_\_\_\_

[NOTE.—See O. XXXVL, r. 21, *ante*, p. 296.]

## No. 28.

This Court doth order that the following accounts and inquiry be taken and Form of ordering accounts made; that is to say,

1. An account of the personal estate not specifically bequeathed of *A. B.*, deceased, the testator in the pleadings named, come to the hands of, &c.
2. An account of the testator's debts.
3. An account of the testator's funeral expenses.
4. An account of the testator's legacies and annuities (if any), given by the testator's will.

5. An inquiry what parts (if any) of the testator's said personal estate are outstanding or undisposed of.

And it is ordered that the testator's personal estate not specifically bequeathed be applied in payment of his debts and funeral expenses in a due course of administration, and then in payment of the legacies and annuities (if any) given by his will.

(If ordered.)

And it is ordered that the following further inquiries and accounts be made and taken; that is to say,

6. An inquiry what real estate the testator was seised of or entitled to at the time of his death.
7. An account of the rents and profits of the testator's real estate received by, &c.
8. An inquiry what incumbrances (if any) affect the testator's real estate, or any and what parts thereof.

(If Sale ordered.)

9. An account of what is due to such of the incumbrancers as shall consent to the sale hereinafter directed in respect of their incumbrances.
10. An inquiry what are the priorities of such last-mentioned incumbrances.

And it is ordered that the testator's real estate be sold with the approbation of the Judge, &c., &c.

And it is ordered that the further consideration of this cause be adjourned and any of the parties are to be at liberty to apply as they may be advised.

[NOTE.—See O. XXXIII., r. 7, *ante*, p. 273.]

**Appendix L.**  
**No. 29.**Consent to act  
as trustee.I, *A. B.*, of  
[the instrument].**No. 29.**, hereby consent to act as a trustee of the [*describe*(Signed) *A. B.*I, *C. D.*, of , solicitor, hereby certify that the above-written  
signature is the signature of *A. B.*, the person mentioned in the above-written  
consent.(Signed) *C. D.*[NOTE.—See O. XXXVIII., r. 19A, *ante*, p. 325.]

## APPENDIX M.

**Appendix M.**

This Appendix, which provided regulations for lodgment in Court and payment out of Court of money in the Queen's Bench Division, is superseded and annulled by rule 2 of the S. C. Funds Rules, 1886, which are made under the powers conferred by s. 4 of the Act of 1883 (Funds, &c.), *post*, p. 718. These Rules are set out *post*, pp. 724 *et seq.* The rules which specially deal with lodgment in Court and payment out of Court in the Queen's Bench Division are rr. 29, 32, 33, 43, 44, and 46.

**Appendix N.**

## APPENDIX N.

## COSTS.

	Higher Scale.	Lower Scale.
WRITS, SUMMONSES, AND WARRANTS.		
Writ of summons for the commencement of any action..	£ s. d. 0 13 4	£ s. d. 0 6 8
And for indorsement of claim, if special .....	0 5 0	0 5 0
Concurrent writ of summons .....	0 6 8	0 6 8
Renewal of a writ of summons .....	0 6 8	0 6 8
Notice of a writ for service in lieu of writ out of juris- diction .....	0 5 0	0 4 0
Writ of inquiry .....	1 1 0	1 1 0
Writ of mandamus .....	1 1 0	0 10 0
Or per folio .....	0 1 4	0 1 4
Writ of <i>subpœna ad testificandum</i> or <i>duces tecum</i> .....	0 6 8	0 6 8
And if more than four folios, for each folio beyond four Writ or writs of <i>subpœna ad testificandum</i> for any number of persons not exceeding three, and the same for every additional number not exceeding three .....	0 1 4	0 1 4
Writ of <i>distringas</i> , pursuant to statute 5 Vict. c. 5 .....	0 6 8	0 6 8
Writ of execution, or other writ to enforce any judg- ment or order .....	0 13 4	0 13 4
And if more than four folios, for each folio beyond four	0 10 0	0 7 0
Procuring a writ of execution or notice to the sheriff, marked with a seal of renewal .....	0 1 4	0 1 4
Notice thereof to serve on sheriff .....	0 6 8	0 6 8
	0 5 0	0 4 0



Appendix N.

	Higher Scale.	Lower Scale.
Any writ not included in the above .....	£ s. d. 0 10 0	£ s. d. 0 7 0
These fees include all indorsements and copies, or <i>precipes</i> , for the officer sealing them, and attendances to issue or seal, except where otherwise provided, but not the Court fees.		
Summonses to attend at Judges' Chambers .....	0 6 8	0 3 0
Or if special, at taxing-officer's discretion, not exceeding	1 1 0	0 13 4
Copy for the Judge, when required .....	0 2 0	0 2 0
Or per folio .....	0 0 4	0 0 4
Originating summons for proceedings in Chambers in the Chancery Division at taxing-officer's discretion, not exceeding .....	1 1 0	1 1 0
And attending to get same and duplicate sealed, and at the proper office to file duplicate and get copies for service stamped .....	0 13 4	0 13 4
Copy for the Judge .....	0 2 0	0 2 0
Or per folio .....	0 0 4	0 0 4
Indorsing same and copies under Order LV., Rule 22..	0 6 8	0 6 8

SERVICES AND NOTICES.

Service, or filing in lieu of service, of any writ, summons, warrant, interrogatories, petition, order, or notice on a party who has not entered an appearance, and if not authorised to be served by post .....	0 5 0.	0 5 0
If served at a distance of more than two miles from the nearest place of business, or office of the solicitor serving the same, for each mile beyond such two miles therefrom .....	0 1 0	0 1 0
Where, in consequence of the distance of the party to be served, it is proper to effect such service through an agent (other than the London agent), for correspondence in addition .....	0 7 0	0 7 0
Where more than one attendance is necessary to effect service, or to ground an application for substituted service, such further allowance may be made as the taxing-officer shall think fit.		
For service out of the jurisdiction such allowance is to be made as the taxing-officer shall think fit.		
Service where an appearance has been entered on the solicitor or party .....	0 2 6	0 2 6
Or if authorised to be served by post .....	0 1 6	0 1 6
Where any writ, order, and notice, or any two of them, have to be served together, one fee only for service is to be allowed.		
In addition to the above fees, the following allowances are to be made :—		
As to writs, if exceeding two folios, for copy for service, per folio beyond such two .....	0 0 4	0 0 4
As to summons to attend at the Judges' Chambers, for each copy to serve .....	0 2 0	0 1 0
Or per folio .....	0 0 4	0 0 4
As to notices in proceedings to wind up companies, for preparing or filling up each notice to creditors to attend and receive debts, and to contributories to settle list of contributories .....	0 1 0	0 1 0
And for preparing or filling up each notice to contributories to be served with a general order for a call, or an order for payment of a call .....	0 1 0	0 1 0
And for drawing notice to be served on contributories or creditors of a meeting, per folio .....	0 1 0	0 1 0

## Appendix N.

	Higher Scale.	Lower Scale.
For each copy of the last-mentioned notice to serve, per folio .....	£ s. d. 0 0 4	£ s. a. 0 0 4
For preparing or filling up for service in any other cause or matter, each notice to creditors to prove claims, and each notice that cheques may be received, specifying the amount to be received for principal and interest, and costs, if any .....	0 1 0	0 1 0
For preparing notice to produce on the trial or hearing of an action, or notice to admit.....	0 7 6	0 5 0
If special or necessarily long, such allowance as the taxing-officer shall think proper, not exceeding per folio .....	0 1 0	0 0 8
And for each copy, such allowance as the taxing-officer shall think proper, not exceeding per folio.....	0 0 4	0 0 4
For preparing notice of motion.....	0 5 0	0 3 0
Or per folio .....	0 1 0	0 1 0
Copy for service .....	0 1 0	0 1 0
Or per folio .....	0 0 4	0 0 4
For preparing any necessary or proper notice, not otherwise provided for, or any demand, pursuant to Order VII., Rules 1 and 2.....	0 1 6	0 1 6
Or if special, and necessarily exceeding three folios, for preparing same, for each folio beyond three .....	0 1 0	0 1 0
And for each copy for service, per folio beyond such three .....	0 0 4	0 0 4
Copies for service of interrogatories and petitions, and of orders with necessary notices (if any) to accompany, per folio .....	0 0 4	0 0 4
Except as otherwise provided, the allowances for services include copies for service.		
Where notice of filing affidavits is required, only one notice is to be allowed for a set of affidavits filed, or which ought to be filed together.		
In proceedings to wind up a company, the usual charges relating to printing shall be allowed in lieu of copies for service, where the fee for copies would exceed the charges for printing, and amount to more than 3l.		
Where any appointment is or ought to be adjourned, service of a notice of the adjournment, or next appointment, is not to be allowed.		
APPEARANCES.		
Entering any appearance .....	0 6 8	0 6 8
If entered at one time, for more than one person, for every defendant beyond the first .....	0 2 0	0 1 0
If a person appearing to a writ of summons to recover land limits his defence by his memorandum of appearance, in addition to the above .....	0 6 8	0 6 8
INSTRUCTIONS.		
To sue or defend .....	0 13 4	0 6 8
For statement of claim or special case.....	2 2 0	0 13 4
For indorsement of writ of summons when no further statement of claim .....	1 1 0	0 13 4
For originating summons 6s. 8d., or not to exceed ....	1 1 0	1 1 0
For defence or further defence .....	0 13 4	0 6 8
For counter-claim .....	0 13 4	0 6 8
For reply when defendant sets up a counter-claim ....	1 1 0	0 13 4
For reply or further reply in any other case with or without joinder of issue .....	0 13 4	0 6 8
For confession of defence .....	0 13 4	0 6 8

Appendix N.

	Higher Scale.	Lower Scale.
	£ s. d.	£ s. d.
For joinder of issue without other matter .....	0 13 4	0 6 8
For special petition, any other pleading (not being a summons), and interrogatories for examination of a party or witness .....	0 13 4	0 6 8
To amend any pleading .....	0 13 4	0 6 8
For affidavit in answer to interrogatories, and other special affidavits .....	0 6 8	0 6 8
To appeal against order of Court or Judge and to appear thereon .....	1 1 0	0 13 4
To add parties by order of Court or Judge.....	0 13 4	0 6 8
For counsel to advise on evidence when the evidence in chief is to be taken orally .....	0 6 8	0 6 8
Or not to exceed .....	1 1 0	1 1 0
For counsel to make any application to a Court or Judge where no other brief .....	0 10 0	0 6 8
For brief on motion for special injunction .....	1 1 0	0 13 4
For brief on hearing or trial of action upon notice of trial or notice for judgment given, whether such trial be before a Judge, with or without a jury, or before an official or special referee, or on trial of an issue of fact before a Judge, commissioner, or referee, or on assessment of damages .....	2 2 0	1 1 0
For such brief, and for brief on the hearing of an appeal when witnesses are to be examined or cross-examined, such fee may be allowed as the taxing-officer shall think fit, having regard to all the circumstances of the case, and to other allowances, if any, for attendances on witnesses and procuring evidence.		
The fees for instructions for brief are to apply to a hearing on further consideration in Court only where an order for accounts and inquiries was made without such hearing or trial, as above mentioned.		
DRAWING PLEADINGS AND OTHER DOCUMENTS.		
Statement of claim .....	1 1 0	0 10 0
Or per folio .....	0 1 0	0 1 0
Defence .....	0 10 0	0 5 0
Or per folio .....	0 1 0	0 1 0
Counter-claim .....	1 1 0	0 5 0
Or per folio .....	0 1 0	0 1 0
Reply, with or without joinder of issue, confession of defence, joinder of issue without other matter, and any other pleading (not being a petition or summons) and amendments of any pleading .....	0 10 0	0 5 0
Or per folio .....	0 1 0	0 1 0
Particulars, breaches, and objections, when required, and one copy to deliver .....	0 6 8	0 5 0
Or such amount as the taxing-officer shall think fit, not exceeding per folio .....	0 1 0	0 0 8
If more than one copy to be delivered, for each other copy, per folio .....	0 0 4	0 0 4
Special case, whether original or in an action, affidavits in answer to interrogatories and other special affidavits, special petitions, and interrogatories, per folio .....	0 1 0	0 1 0
Brief, on trial or hearing of cause, issue of fact, assessment of damages, examination of witnesses, special case and petition before a Court or Judge, sheriff, commissioner, referee, examiner, or officer of the Court when necessary and proper in addition to pleadings, including necessary and proper observations, per folio .....	0 1 0	0 1 0



## Appendix N.

	Higher Scale.	Lower Scale.
Brief on application to add parties .....	£ s. d. 0 10 0	£ s. d. 0 6 8
Or per folio .....	0 1 0	0 1 0
Brief on further consideration, per sheet of 10 folios ..	0 6 8	0 6 8
Accounts, statements, and other documents for the Judges' Chambers, when required, not exceeding per folio .....	0 1 0	0 0 8
Advertisements to be signed by judge's clerk, including attendance therefor .....	0 13 4	0 6 8
Bills of costs for taxation, including copy for the tax- ing-officer .....	0 0 8	0 0 8

## COPIES.

Of pleadings, briefs, and other documents where no other provision is made, at per folio .....	0 0 4	0 0 4
Where, pursuant to Rules of Court any pleading, special case or petition of right, or evidence is printed, the solicitor of the party printing shall be allowed for a copy for the printer (except when made by the officer of the Court), at per folio .....	0 0 4	0 0 4
And for examining the proof print, at per folio .....	0 0 2	0 0 2
And for printing the amount actually and properly paid to the printer, not exceeding per folio .....	0 1 0	0 1 0
And in addition for every 20 beyond the first 20 copies, at per folio .....	0 0 1	0 0 1
And where any part shall properly be printed in a foreign language, or as a fac-simile, or in any unusual or special manner, or where any alteration in the document being printed becomes necessary after the first proof, such further allowance shall be made as the taxing-officer shall think reasonable.		
These allowances are to include all attendances on the printer.		
The solicitor for a party entitled to take printed copies shall be allowed, for such number of copies as he shall necessarily or properly take, the amount he shall pay therefor.		
In addition to the allowances for printing and taking printed copies, there shall be allowed for such printed copies as may be necessary or proper for the follow- ing, but for no other purposes (videlicet):		
Of any pleading for delivery to the opposite party, or filing in default of appearance .....		
Of any special case for filing .....		
Of any petition of right for presentation, if presented in print, and for the solicitor of the Treasury, and service on any party .....		
Of any pleading, special case, or petition of right, for the use of the Court or Judge .....		
Of any affidavit to be sworn to in print.		
And of any pleading, special case, petition of right, or evidence for the use of counsel in Court, and in country agency causes when proper to be sent as a close copy for the use of the country solicitor, at per folio .....	0 0 3	0 0 2
Such additional allowances for printed copies for the Court or Judge, and for counsel, are not to be made where written copies have been made previously to printing, and are not in any case to be made more than once in the progress of the cause .....		

Appendix N.

	Higher Scale.	Lower Scale.
Close copies, whether printed or written, are not to be allowed as of course, but the allowance is to depend on the propriety of making or sending the copies, which in each case is to be shown and considered by the taxing-officer.	£ s. d.	£ s. d.
Inserting amendments in a printed copy of any pleading, special case, or petition of right, when not reprinted .....	0 5 0	0 1 0
Or per folio .....	0 0 4	0 0 4
PERUSALS.		
Of statement of claim, defence, reply, joinder of issue, and other pleading (not being a petition in a pending cause or matter, or summons other than an originating summons), by the solicitor of the party to whom the same are delivered.....	0 13 4	0 6 8
Or per folio .....	0 0 4	0 0 4
Of amendment of any such pleading in writing .....	0 6 8	0 6 8
Or per folio .....	0 0 4	0 0 4
If same reprinted .....	0 13 4	0 6 8
Or per folio of amendment.....	0 0 4	0 0 4
Of interrogatories to be answered by a party by his solicitor .....	0 13 4	0 6 8
Or per folio .....	0 0 4	0 0 4
Of special case by the solicitor of any party except the one by whom it is prepared .....	0 13 4	0 6 8
Or per folio .....	0 0 4	0 0 4
Of copy order to add parties, notice of defendant's claim against any person not a party to the action under Order XVI., Rule 49, and of defendant's defence and counter-claim served on a person not a party under Order XXI., Rule 13, by the solicitor of the party served therewith, and in these several cases the perusal of the plaintiff's statement of claim is also to be allowed unless the solicitor has been previously allowed such perusal .....	0 13 4	0 6 8
Or per folio .....	0 0 4	0 0 4
Of notice to produce on trial or hearing of action, and notice to admit by the solicitor of the party served ..	0 13 4	0 6 8
Or (if to admit facts) under Order XXXII., Rule 4, per folio .....	0 1 0	0 1 0
Of affidavit in answer to interrogatories by the solicitor of the party interrogating, and of other special affidavits by the solicitor of the party against whom the same can be read, per folio.....	0 0 4	0 0 4
ATTENDANCES.		
To obtain consent of next friend to sue in his name or of a guardian <i>ad litem</i> .....	0 13 4	0 6 8
To deliver, or file in lieu of delivery, any pleading (not being a petition or summons) and a special case ....	0 6 8	0 3 4
To inspect, or produce for inspection, documents pursuant to a notice to admit .....	0 13 4	0 6 8
Or per hour .....	0 6 8	0 6 8
To examine and sign admissions .....	0 13 4	0 6 8
To inspect, or produce for inspection, documents referred to in any pleading, notice in lieu of pleading, or affidavit, pursuant to notice under Order XXXI., Rule 14 .....	0 6 8	0 6 8
Or per hour .....	0 6 8	0 6 8

## Appendix N.

	Higher Scale.	Lower Scale.
To obtain or give any necessary or proper consent ....	£ s. d. 0 6 8	0 6 8
To obtain an appointment to examine witnesses .....	0 6 8	0 6 8
On examination of witnesses before any examiner, commissioner, officer or other person .....	0 13 4	0 13 4
Or according to circumstances, not to exceed .....	2 2 0	2 2 0
Or if without counsel, not to exceed .....	3 3 0	3 3 0
On deponents being sworn, or by a solicitor or his clerk to be sworn, to an affidavit in answer to interrogatories or other special affidavit .....	0 6 8	0 6 8
On a summons at Judges' Chambers .....	0 6 8	0 6 8
Or according to circumstances, not to exceed .....	1 1 0	1 1 0
In the Chancery Division, all allowances for attending at the Judges' Chambers are to be by the Judge or chief clerk as heretofore.		
To file chief clerks' and taxing masters' certificates, and get copy marked as an office copy .....	0 6 8	0 6 8
On counsel with brief or other papers—		
If counsel's fee one guinea .....	0 6 8	0 3 4
If more and under five guineas .....	0 6 8	0 6 8
If five guineas and under 20 guineas .....	0 13 4	0 6 8
If 20 guineas .....	1 1 0	0 13 4
If 40 guineas or more .....	2 2 0	—
On consultation or conference with counsel .....	0 13 4	0 13 4
To enter or set down action, special case or appeal, for hearing or trial .....	0 6 8	0 6 8
In Court on motion of course and on counsel and for order .....	0 13 4	0 10 0
To present petition for order of course and for order ..	0 13 4	0 10 0
In Court on every special motion, each day .....	0 13 4	0 6 8
On same when heard each day .....	0 13 4	0 13 4
Or according to circumstances, not to exceed .....	2 2 0	2 2 0
On special case, or special petition, or application adjourned from the Judges' Chambers, when in the special paper for the day, or likely to be heard .....	0 10 0	0 6 8
On same when heard .....	1 1 0	0 13 4
Or according to circumstances, not to exceed .....	2 2 0	2 2 0
On hearing or trial of any cause, or matter or issue of fact, in London or Middlesex, or the town where the solicitor resides or carries on business, whether before a Judge with or without a jury, or commissioner or referee, or on assessment of damages, when in the paper .....	0 10 0	0 10 0
When heard or tried .....	1 1 0	0 13 4
Or according to circumstances not to exceed .....	3 3 0	3 3 0
When not in London or Middlesex, nor in the town where the solicitor resides or carries on business, for each day (except Sundays) he is necessarily absent ..	3 3 0	3 3 0
And expenses (besides actual reasonable travelling expenses) each day, including Sundays .....	1 1 0	1 1 0
Or if the solicitor has to attend on more than one trial or assessment at the same time and place, in each case	1 11 6	1 1 0
The expenses in such case to be rateably divided.		
To hear judgment when same adjourned .....	0 13 4	0 6 8
Or according to circumstances .....	1 1 0	0 13 4
To deliver papers (when required) for the use of a judge prior to a hearing .....	0 6 8	0 6 8
If more than one judge .....	0 13 4	0 13 4
On taxation of a bill of costs .....	0 6 8	0 6 8
Or according to circumstances, not to exceed .....	2 2 0	2 2 0
Unless the same shall necessarily occupy so much time that the taxing officer shall consider such amount in-		



Appendix N.

	Higher Scale.	Lower Scale.
	£ s. d.	£ s. d.
adequate, in which case he may allow such further fee as he shall think proper.		
In actions and matters for purposes within the cognizance of the Court of Chancery before the principal Act came into operation, such further fee as the taxing-officer may think fit, not exceeding the allowances heretofore made.		
To obtain or give an undertaking to appear .....	0 6 8	0 6 8
To present a special petition, and for same answered ..	0 6 8	0 6 8
On printer to insert advertisement in Gazette .....	0 6 8	0 6 8
On printer to insert same in other papers, each printer..	0 6 8	—
Or every two.....	—	0 6 8
On registrar to certify that a cause set down is settled, or for any reason not to come into the paper for hearing .....	0 6 8	0 6 8
For an order drawn up by chief clerk, and to get same entered .....	0 6 8	0 6 8
On counsel to procure certificate that cause proper to be heard as a short cause, and on registrar to mark same .....	0 6 8	0 6 8
To mark conveyancing counsel or taxing-master .....	0 6 8	0 6 8
For preparing and drawing up an order made at Chambers in proceedings to wind up a company and attending for same, and to get same entered .....	0 13 4	0 13 4
And for engrossing every such order, per folio .....	0 0 4	0 0 4
NOTE.—An order of course means an order made on an <i>ex parte</i> application, and to which a party is entitled as of right on his own statement and at his own risk.		
To examine an abstract of title with deeds, per hour, in a cause or matter.....	0 10 0	0 10 0
To produce deeds for such purpose, per hour.....	0 6 8	0 6 8
OATHS AND EXHIBITS.		
Commissioners to take oaths or affidavits. For every oath, declaration, affirmation, or attestation upon honour in London or the country .....	0 1 6	0 1 6
The solicitor for preparing each exhibit in town or country .....	0 1 0	0 1 0
The commissioner for marking each exhibit .....	0 1 0	0 1 0
TERM FEES.		
For every term commencing on the day the sittings in London and Middlesex of the High Court of Justice commence, and terminating on the day preceding the next such sittings, in which a proceeding in the cause or matter by or affecting the party, after appearance entered, shall take place .....	0 15 0	0 15 0
And further, in country agency causes or matters, for letters .....	0 6 0	0 6 0
Where no proceeding in the cause or matter is taken which carries a term fee, a charge for letters may be allowed, if the circumstances require it.		
In addition to the above an allowance is to be made for the necessary expense of postages, carriage and transmission of documents.		

Appendix O.

## APPENDIX O.

[See Preface to Rules, *ante*, p. 128\*.]

- (1.) The several Rules, Orders, and Forms contained in the Schedule and Appendix to the Supreme Court of Judicature Act (1873) Amendment Act.
- (2.) The additional Rules to the Judicature Act, 1875.
- (3.) The Rules of the Supreme Court, December, 1875.
- (4.) The Rules of the Supreme Court, February, 1876.
- (5.) The Rules of the Supreme Court, June, 1876.
- (6.) The Rules of the Supreme Court, December, 1876.
- (7.) The Rules of the Supreme Court, May, 1877.
- (8.) The Rules of the Supreme Court (Costs).
- (9.) The Rules of the Supreme Court, June, 1877.
- (10.) The Rules of the Supreme Court, November, 1878.
- (11.) The Rules of the Supreme Court, March, 1879.
- (12.) The Rules of the Supreme Court, December, 1879.
- (13.) The Rules of the Supreme Court, April, 1880.
- (14.) The Rules of the Supreme Court, May, 1880.
- (15.) The Rules of the Supreme Court, May, 1883.
- (16.) The *Regulæ Generales* of Hilary Term, 1853, dated 11th January, 1853 (except the Rules as to Juries).
- (17.) *Regulæ Generales*, as to Pleading made by the Judges in pursuance of the Common Law Procedure Act, 1852, dated the 10th of May, 1853.
- (18.) The Rules under the 6th section of the Debtors' Act, 1869.
- (19.) The Chancery Consolidated General Orders of 1860.
- (20.) The Chancery Orders dated—  
     March 6th, 1860.  
     March 20th, 1860.  
     February 1st, 1861.  
     February 5th, 1861.  
     July 13th, 1861.  
     January 1st, 1862.  
     May 16th, 1862.  
     May 27th, 1865.  
     May 7th, 1866.  
     November 22nd, 1866.  
     April 17th, 1867.
- (21.) The Chancery Regulations dated August 8th, 1857, and March 15th, 1860.
- (22.) The Rules, Orders, and Regulations for the High Court of Admiralty of England, 1859 and 1871.

(Signed)

SELBOENE, C.  
 COLERIDGE, C.J.  
 W. B. BRETT, M.R.  
 JAMES HANNEN.  
 NATH. LINDLEY, L.J.  
 EDW. FRY, L.J.  
 C. E. POLLOCK, B.  
 H. MANISTY, J.

(Signed in respect of Rules as to  
 sittings of Court of Appeal.)

HENRY COTTON, L.J.

## TABLE OF TIME

Table of Time.

*To be limited for Entering Appearance after service out of the  
Jurisdiction of Writ or Notice of Writ.*



It has become necessary, having regard to the increased facilities given by the General Post Office, consequent upon the great extension of railway and steamboat communication within the last thirty or forty years, to revise the Table of Times for appearance after service out of the jurisdiction which has been hitherto in use in the Registrar's office.

The time allowed for entering appearance after service out of the jurisdiction is, as a general rule, double the ordinary time it takes to reach the place where the defendant is, or probably may be found, and the first column of the table (extracted from the Post Office Handbook) contains the approximate time occupied in course of post from London to the places mentioned in the second column.

To the time allowed for appearing after service abroad there has, in all cases, been added the eight days allowed for appearing after service within the jurisdiction, and, when the place is difficult of access, a slight further addition has been made.

It will also be generally advisable to allow a certain area for service, not limited to the actual place where the defendant is, or probably may be found, but in such cases care should be taken to allow sufficient further time to admit of service at the most distant point of that area, *e.g.*, when the service is to be "at Paris or elsewhere in the Republic of France," the time allowed for Nice, and not for Paris, should be inserted.

Approved,

P. J. KING,

Senior Registrar.

Registrar's Office,  
15th July, 1886.



## TABLE OF TIME FOR ENTERING APPEARANCE.

Table of Time.

## ORDER XI., RULES 4 AND 5.

TABLE OF TIME to be limited for Entering Appearance after service out of the Jurisdiction of Writ or Notice of Writ.

Postal Table of Time occupied.		NAME OF PLACE.	Days for appear- ance.
Days.	Hours.		
11	—	Aden .....	30
		Africa :	
4	—	North Coast .....	16
17	—	West Coast .....	42
—	15	Amsterdam .....	10
15	—	Antigua .....	38
—	11	Antwerp .....	10
29	—	Argentine Republic .....	66
28	—	Ascension .....	64
5	—	Athens .....	20
39	—	Auckland (New Zealand), <i>via</i> San Francisco .....	88
16	—	Bahamas .....	40
18	—	Bahia .....	44
1	—	Bâle .....	10
13	—	Barbadoes .....	34
1	18	Barcelona .....	14
32	—	Batavia .....	72
1	6	Bayonne .....	12
18	—	Belize (British Honduras), <i>via</i> New Orleans .....	46
1	2	Berlin .....	12
15	—	Bermuda, <i>via</i> Halifax .....	38
1	8	Berne .....	12
9	—	Beyrout .....	26
18	—	Bombay .....	44
—	22	Bordeaux .....	10
—	—	Borneo (North) .....	90
1	2	Bremen .....	12
2	18	Brindisi .....	14
45	—	Brisbane .....	98
23	—	British Columbia .....	54
14	12	British Guiana .....	38
—	10	Brussels .....	10
2	—	Buda Pesth .....	12
29	—	Buenos Ayres .....	66
21	—	Bushire (Persian Gulf) .....	50
29	—	Busreh (Persian Gulf) .....	66
3	12	Cadiz .....	16
6	—	Cairo .....	20
21	—	Calcutta .....	50
41	—	Caldera, <i>via</i> Panama .....	90
32	—	Callao .....	72
35	—	Cameroons (Africa) .....	78
24	—	Cape Coast Castle .....	56
21	—	Cape Town .....	50
24	—	Carthage (Colombia) .....	56
—	—	Channel Islands .....	12
2	—	Christiania .....	14

## TABLE OF TIME FOR ENTERING APPEARANCE.

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Table of Time.

Postal Table of Time occupied.		NAME OF PLACE.	Days for appear- ances.
Days.	Hours.		
40	—	Cobija .....	88
—	15	Cologne .....	10
20	—	Colombo (Ceylon) .....	48
21	—	Colon .....	50
43	—	Congo (Africa) .....	94
5	—	Constantinople, <i>via</i> Varna .....	} 24
8	—	„ „ Brindisi .....	
2	—	Copenhagen .....	14
42	—	Coquimbo, <i>via</i> Magellan .....	92
8	—	Cyprus .....	24
36	—	Delagoa Bay .....	80
14	12	Demerara .....	38
14	8	Dominica .....	38
1	12	Dresden .....	12
35	—	Falkland Islands .....	78
36	—	Fernando Po .....	80
44	—	Fiji .....	100
2	—	Florence .....	14
1	8	Frankfort on Maine .....	12
38	—	Gaboon (Africa) .....	84
1	4	Geneva .....	12
1	17	Genoa .....	12
4	—	Gibraltar .....	16
3	—	Gothenburg .....	14
14	—	Goree (Africa) .....	36
10	—	Grand Canary .....	28
14	—	Grenada .....	36
24	—	Grey Town .....	56
14	15	Guadaloupe .....	38
26	—	Guayaquil, <i>via</i> Panama .....	60
—	16	Hague, The .....	10
1	8	Hamburg .....	12
16	—	Havana .....	40
37	—	Hong Kong .....	82
24	—	Honolulu .....	56
10	—	Iceland .....	30
35	—	Inhambane (Africa) .....	78
1	10	Interlaken .....	12
38	—	Iquique, <i>via</i> Panama .....	84
—	—	Ireland .....	10
18	—	Jamaica .....	44
12	—	Jeddah (Arabia) .....	32
33	—	King George's Sound .....	74
21	—	Kurrachee .....	50
31	—	Lagos (Africa) .....	70
23	—	La Guayra .....	54
3	23	Lisbon .....	20
47	—	Loanda (Africa) .....	102
1	12	Lucerne .....	12
—	22	Lyons .....	10
5	—	Madeira .....	18
20	—	Madras .....	48
2	—	Madrid .....	14
3	12	Malaga .....	16
4	12	Malta .....	18
—	—	Man (Isle of) .....	10
1	6	Marseilles .....	12
14	—	Martinique .....	36
20	—	Mauritius .....	48

## TABLE OF TIME FOR ENTERING APPEARANCE.

Table of Time.

Postal Table of Time occupied.		NAME OF PLACE.	Days for appear- ance.
Days.	Hours.		
40	—	Melbourne .....	88
1	12	Milan .....	14
35	—	Mollendo, <i>viâ</i> Panama .....	78
19	—	Monrovia (Africa) .....	46
26	—	Monte Video .....	60
15	—	Montserrat (West Indies) .....	38
3	12	Moscow .....	18
27	—	Moulmein .....	62
26	—	Mozambique, <i>viâ</i> Brindisi .....	60
1	16	Munich .....	14
24	—	Muscat .....	56
2	20	Naples .....	16
26	—	Natal .....	60
8	—	Newfoundland .....	24
10	—	New York .....	28
1	13	Nice .....	14
9	—	Nova Scotia (Halifax) .....	26
1	8	Nuremberg .....	12
3	20	Odessa .....	18
38	—	Old Calabar (Africa) .....	84
4	—	Oporto .....	16
22	—	Panama .....	52
—	10	Paris .....	10
28	—	Payta, <i>viâ</i> Panama .....	64
—	—	Pekin .....	142
26	—	Penang .....	60
16	—	Pernambuco .....	40
36	—	Perth (Western Australia) .....	80
20	—	Point de Galle .....	48
16	—	Port au Prince .....	40
50	—	Port Darwin .....	108
15	—	Porto Rico (San Juan) .....	38
25	—	Puerto Cabello .....	58
33	—	Punta Arenas (Magellan) .....	74
10	—	Quebec .....	28
29	—	Quillimane (Africa) .....	66
25	—	Rangoon .....	58
2	15	Riga .....	16
28	—	Réunion .....	64
21	—	Rio de Janeiro .....	50
2	18	Rome .....	16
—	13	Rotterdam .....	10
34	—	Saigon (Cochin China) .....	76
18	—	St. Helena .....	44
15	23	St. Kitts .....	40
13	13	St. Lucia .....	36
1	2	St. Nazaire (France) .....	12
3	—	St. Petersburg .....	16
16	12	St. Thomas .....	42
10	—	St. Vincent .....	28
13	12	St. Vincent (West Indies) .....	36
53	—	Samoa .....	114
16	—	San Francisco .....	40
27	—	Santa Martha (Colombia) .....	62
2	12	Santander .....	14
25	—	Santos (Brazil) .....	58
24	—	Savanilla .....	56
—	—	Scotland (mainland) .....	10
—	—	„ (islands) .....	14



# TABLE OF TIME FOR ENTERING APPEARANCE.

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Postal Table of Time occupied.		NAME OF PLACE.	Days for appear- ance.	Table of Time.
Days.	Hours.			
18	—	Senegal .....	44	
23	—	Seychelles .....	54	
42	—	Shanghai .....	92	
17	—	Sierra Leone .....	42	
28	—	Singapore .....	64	
3	10	Stockholm .....	16	
1	—	Strasbourg .....	10	
1	6	Stattgart .....	12	
6	12	Suez .....	22	
43	—	Sydney .....	94	
9	—	Teneriffe .....	26	
10	—	Tiflis (Caucasus) .....	28	
3	—	Trieste .....	16	
14	13	Trinidad .....	38	
1	10	Turin .....	12	
39	—	Valparaiso, <i>via</i> Magellan .....	94	
43	—	„ „ Panama .....		
2	4	Venice .....	14	
25	—	Vera Cruz .....	58	
1	20	Vienna .....	14	
3	—	Vigo .....	14	
42	—	Wellington (New Zealand), <i>via</i> San Francisco .....	94	
43	—	Yokohama .....	94	
21	—	Zanzibar .....	50	
1	6	Zurich .....	12	

## ORDER AS TO SUPREME COURT FEES, 1884.

This Order came into operation on the 25th of January, 1884.

The Order which previously regulated Court fees was an Order dated October the 28th, 1875. That Order contained two scales of Court fees, one adapted to the higher scale of costs, the other adapted to the lower scale.

Order LXV., Rules 8, 9, and 10 of the R. S. C., 1883, made a considerable change in the scale of costs. By these rules the lower scale is made the general scale, and the higher scale is only to be allowed by Order.

The present Order as to Court fees has only one scale of fees, many of them being the same as the former higher scale.

The Order as issued had no marginal references.

The Right Honourable Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, doth hereby, in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling him in this behalf, order and direct in manner following :—

### Orders I., II.

Fees and percentages; to what Courts and offices applicable.

#### I.

The fees and per-centages contained in the schedule hereto are fixed and appointed to be, and shall be taken in the High Court of Justice, and in the Court of Appeal, and in any Court to be created by any commission, and in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, and by any officer paid wholly or partly out of public moneys who is attached to any of those Courts, or the Supreme Court or any Judge of those Courts, or any of them. And the said fees and per-centages shall, until otherwise determined by the Treasury, be taken by stamps in the same manner as heretofore, except those taken in the District Registries, which shall, until otherwise determined by the Treasury, be taken as the fees and per-centages are now taken.

#### II.

Exceptions.

The provisions in this order shall not apply to or affect any of the matters following (that is to say) :—

The existing fees and per-centages in respect of any of the jurisdictions which are not, by the Supreme Court of Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or the Court of Appeal;

The existing fees and per-centages in respect of any matters within the jurisdiction of the Court of Probate at the time of the passing of the Supreme Court of Judicature Act, 1875, other than Probate actions, or in respect of any appeal in bankruptcy; Ords. II.—VI.

The existing fees and per-centages in respect of any criminal proceedings, other than such proceedings on the Crown side of the Queen's Bench Division as the scale contained in the schedule hereto may be applicable to;

The existing fees and per-centages in respect of matters on the Revenue side of the Queen's Bench Division, and proceedings and business in the office of the Queen's Remembrancer, other than such matters, proceedings, and business as the scale contained in the schedule hereto may be applicable to;

The existing fees and per-centages authorised to be taken by any sheriff, under-sheriff, deputy-sheriff, bailiff, or other officer or minister of a sheriff;

The existing fees and per-centages directed to be taken or paid by any Act of Parliament, and in respect of which no fee or per-centage is hereby provided;

The existing fees and per-centages which shall have become due or payable before this Order comes into operation.

### III.

Save as otherwise provided by this Order all existing fees and per-centages which may be taken in any of the Courts whose jurisdiction is, by the Judicature Acts, 1873 and 1875, transferred to the High Court of Justice or Court of Appeal, or in any office which is connected with any of those Courts, or in which any business connected with any of those Courts is conducted, or by any officer paid wholly or partly out of public moneys who is attached to any of those Courts, or the Supreme Court, or any Judge of those Courts or any of them, shall be and are hereby abolished. Abolition of existing fees.

### IV.

A folio is to comprise 72 words, every figure comprised in a column, or authorised to be used, being counted as one word. Length of folio.

See O. LXV., r. 27 (14), *ante*, p. 491.

### V.

The provisions of Order LXXI. of the Rules of the Supreme Court, 1883, shall apply to this Order. Interpretation of terms.

### VI.

This Order shall come into operation on the 25th day of January, 1884, and may be cited as "The Order as to Supreme Court Fees, 1884." Commencement of order.



Schedule.

## THE SCHEDULE ABOVE REFERRED TO.

An Order or Rule herein referred to by number shall mean the Order or Rule so numbered in the Rules of the Supreme Court, 1883.

## SUMMONSES, WRITS, NOTICES, COMMISSIONS, AND WARRANTS.

		£	s.	d.
Summonses, &c.	1. On sealing a writ of summons for commencement of an action .....	0	10	0
	2. On sealing a concurrent, renewed, or amended writ of summons for commencement of an action ....	0	2	6
	3. On sealing a notice for service under Order XVI., rule 48 .....	0	2	6
	4. On sealing a writ of mandamus .....	1	0	0
	5. On sealing a writ of subpoena for witnesses, not exceeding three persons .....	0	5	0
	6. On sealing a writ of execution, a subpoena pursuant to the Court of Probate Act, 1858, section 23, and every other writ .....	0	5	0
	7. On sealing or issuing an originating summons under the Act 6 & 7 Vict. c. 73, for the taxation of a solicitor's bill of costs within twelve months after delivery, or delivery of a bill of costs by a solicitor, including the order to be made thereon.....	0	10	0
	8. On sealing any other originating summons .....	0	10	0
	9. On amending same .....	0	5	0
	10. On sealing or issuing a summons for directions under Order XXX. ....	0	10	0
	11. On sealing or issuing any other summons, or Taxing-Master's warrant .....	0	3	0
	12. On filing a notice to have a reference to an Admiralty Registrar placed in the list for hearing.....	0	10	0
	13. On a notice in Admiralty actions pursuant to Order LXVII., rule 10 .....	0	15	0
	14. On sealing or issuing a commission to take oaths or affidavits in the Supreme Court .....	5	0	0
	15. On every other commission .....	1	0	0
	16. On marking a copy of a petition of right for service..	0	5	0

## APPEARANCES.

17. On entering an appearance, for each person.....	0	2	0
18. On amending same .....	0	2	0

## COPIES.

Copies.	19. On a copy of a written deposition of a witness to enable a party to print the same, for each folio ..	0	0	4
	20. On examining a written or printed copy, and marking or sealing same as an office copy, for each folio ..	0	0	2
	21. On making a copy and marking same as an office copy, for each folio .....	0	0	6
	22. On a copy in a foreign language—the actual cost.			

	£	s.	d.	Schedule.
23. On a copy of a plan, map, section, drawing, photograph, or diagram—the actual cost.				
24. On a printed copy of an order, not being an office or certified copy, for each folio .....	0	0	1	

## ATTENDANCES.

	£	s.	d.	Attendances.
25. On an application, with or without a subpoena, for any officer to attend as a witness, or to produce records or documents to be given in evidence (in addition to the reasonable expenses of the officer) for each day or part of a day he shall necessarily be absent from his office .....	1	0	0	

The officer may require a deposit of stamps on account of any further fees, and a deposit of money on account of any further expenses which may probably become payable beyond the amount paid for fees and expenses on the application, and the officer or his clerk taking such deposit shall thereupon make a memorandum thereof on the application.

The officer may also require an undertaking in writing to pay any further fees and expenses which may become payable beyond the amounts so paid and deposited.

## OATHS, &amp;c.

	£	s.	d.	Oaths, &c.
26. On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster-General, for each person making the same .....	0	1	6	
27. And in addition thereto for each exhibit therein referred to and required to be marked .....	0	1	0	

## FILING.

	£	s.	d.	Filing.
28. On filing a special case or petition of right .....	1	0	0	
29. On filing, except in Admiralty actions, and unless otherwise provided, an affidavit, deposition, or set of depositions (including any exhibits annexed to any such affidavit or deposition), statement of claim in default of appearance, official and special referees' certificates, petition, preliminary act, submission to arbitration, award, warrant of attorney, cognovit, bail, satisfaction piece, bond, writ of execution with return, and power of attorney, and every other proceeding in a Probate action or in a Divorce or other Matrimonial cause or matter required by Act of Parliament, general order, or order in the action, cause, or matter to be filed in the Principal Probate Registry .....	0	2	6	
30. On filing a scheme pursuant to the Railway Companies Act, 1867, or the Liquidation Act, 1868 .....	1	0	0	

## ORDER AS TO SUPREME COURT FEES, 1884.

Schedule.		£	s.	d.
	31. On filing scripts in a Probate action or on depositing, pursuant to an order in any cause or matter, any documents for safe custody or production, if the number does not exceed five .....	0	5	0
	32. If exceeding five .....	0	10	0
	33. On a receipt for any document or documents to which the two last fees apply, when delivered out, or for any other document or documents when delivered out of the Principal Probate Registry .....	0	2	6
	34. On filing an affidavit and notice under Order XLVI., rule 4 .....	0	10	0
	35. On every minute in Admiralty actions pursuant to Order LXVI., rule 8, for every instrument or document to which the minute relates (other than an exhibit, or any instrument or document previously issued from the registry or the marshal's office) unless otherwise provided .....	0	5	0
	36. On filing a bill of sale and affidavit therewith where the consideration (including further advances) does not exceed 100£. ....	0	5	0
	37. Above 100£. and not exceeding 200£. ....	0	10	0
	38. Above 200£. ....	1	0	0
	39. On filing under the Bills of Sale Acts, 1878 and 1882, any other document to which the fees Nos. 36, 37, and 38, do not apply .....	0	10	0
	40. On filing an affidavit of re-registration of a bill of sale or any such other document as in No. 39 mentioned .....	0	10	0
	41. On filing a fiat of satisfaction .....	0	5	0

## CERTIFICATES.

Certificates.	42. On a certificate of appearance, or of a pleading, affidavit, or proceeding having been entered, filed, or taken, or of the negative thereof, unless otherwise provided .....	0	2	6
	43. Or if required for use in a foreign country .....	0	5	0
	44. Or if a certificate of proceedings pursuant to Order LXI., rule 24 .....	0	5	0

## SEARCHES AND INSPECTIONS.

Searches and inspections.	45. On an application to search for an appearance or an affidavit, and inspecting the same .....	0	1	0
	46. On an application to search an index, and inspect a pleading, judgment, decree, order, or other record, unless otherwise expressly provided for by any Act of Parliament or this Order, and to inspect scripts filed or documents deposited pursuant to an order for safe custody or production, for each hour or part of an hour occupied .....	0	2	6
	47. Not exceeding on one day .....	0	10	0



## EXAMINATION OF WITNESSES.\*

## Schedule.

	£	s.	d.	Examination of witnesses.
48. On every memorandum of appointment for an examination to be taken before an examiner of the Court	0	5	0	
49. On every witness sworn and examined by an officer of the Court in his office, unless otherwise provided, including oath, for each hour or part of an hour	0	10	0	
50. On an examination of witnesses by any such officer away from the office (in addition to reasonable travelling and other expenses), per day	3	0	0	
51. The officer may require a deposit of stamps on account of fees and a deposit of money on account of expenses, which may probably become payable beyond any amount paid for fees and expenses upon the examination, and the officer, or his clerk, taking such deposit shall thereupon make a memorandum thereof and deliver the same to the party making the deposit.				

The officer may also require an undertaking, in writing, to pay any further fees and expenses which may become payable beyond the amount so paid and deposited.

## HEARING.

52. On entering or setting down, or re-entering or re-setting down an appeal to the Court of Appeal, or a cause or matter for trial or hearing in any Court in London or Middlesex or at any assizes, including hearing on further consideration where no such fee was paid on the original hearing, whether on summons adjourned from chambers or otherwise, and including special case, a petition in a Divorce or Matrimonial cause or matter by which a proceeding is commenced, and petition of right, but not any other petition, nor any other summons adjourned from chambers	2	0	0	Hearing.
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[NOTE.—This fee is payable though the matter for hearing does not arise in an action, as in the case of a rule nisi against a justice under 11 & 12 Vict. c. 44, s. 5: *Ex parte Hasker*, 14 Q. B. D. 82. The fee is not payable on an appeal from chambers: *Ex parte Dudley*, 33 W. R. 750.]

53. On entering directions of the Judge at a trial pursuant to Order XXXVI., rules 41 and 42, and certifying same when required	1	0	0	
54. On writing for the attendance of Trinity masters or other assessors on the hearing of an Admiralty action	0	10	0	
55. On answering and setting down for hearing in Court a petition by which any proceeding is commenced, unless otherwise provided	1	0	0	
56. Any other petition	0	10	0	

\* See O. XXXVII., rr. 39—51, as to examiners of the Court, *ante*, pp. 317—320.

## Schedule.

## JUDGMENTS, DECREES, AND ORDERS.

## Judgments.

	On drawing up and entering judgments, decrees, and orders—	£	s.	d.
57.	If made in Court on the original hearing or hearing on further consideration of a cause, or on the hearing of a special case or petition, or on any application to the Court of Appeal, unless otherwise provided .....	1	0	0
	Where in a Divorce or Matrimonial cause or matter a decree nisi is made, and afterwards a decree absolute, no fee shall be payable on the decree absolute.			
58.	If a judgment without hearing in Court or a final order in a Probate action made by a Registrar, or if an order made in a Probate action or in a Divorce or Matrimonial cause or matter on a motion, including filing the case or application on which the order is made .....	0	10	0
59.	If made on the hearing of an originating summons, unless otherwise provided .....	0	10	0
60.	If made at chambers in the Chancery Division on the hearing of a cause or matter on further consideration .....	0	10	0
61.	If made under Order XV., Order XXXII., rule 6, or Order XXXIII., rule 2 .....	0	10	0
62.	If made on any application by Order LV., rule 2, directed to be disposed of in chambers comprised in sections (1), (2), (3), (5), (6), (7), or (10), of the said rule, exclusive of those comprised in section (12) of the same rule .....	0	10	0
63.	If an order of course on a petition of right .....	0	10	0
64.	If an order for a commission on a petition of right ..	1	0	0
65.	If an order of course under the Act 6 & 7 Vict. c. 73, to tax a solicitor's bill of costs within twelve months after delivery, or for delivery of a bill of costs by a solicitor where fee No. 7 is not applicable .....	0	10	0
66.	On any other order, including an agreement filed pursuant to Order LII., rule 23, in Admiralty actions, and filing same .....	0	5	0
67.	On signing a note or memorandum of an order pursuant to Order LII., rule 14, when required for production, where no order is drawn up .....	0	3	0
68.	On a memorandum to enter an order <i>nunc pro tunc</i> ..	0	5	0

## ON PROCEEDINGS IN THE CHANCERY DIVISION AT THE JUDGES' CHAMBERS, OR BEFORE A TAXING-MASTER OR DISTRICT REGISTRAR.

Chancery proceedings.	69.	On the sale or mortgage of any land or hereditaments pursuant to any order directing a sale or mortgage with the approbation of the Judge made in any cause or matter for the purpose of raising money to be dealt with by the Court in such cause	£	s.	d.
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	£	s.	d.	Schedule.
or matter, for every 100 <i>l.</i> or fraction of 100 <i>l.</i> of the amount raised .....	0	2	0	

70. On the approval of the purchase of any land or hereditaments, or of the title to any land or hereditaments, to be purchased pursuant to any order in any cause or matter with money under the control of the Court in such cause or matter, for every 100*l.* or fraction of 100*l.* of the amount of the purchase-money..... 0 2 0
71. On proceedings pursuant to an order in any cause or matter where the amount of the outstanding or undisposed of estate of a deceased person or of the estate subject to any trust or partnership shall be ascertained for the purpose of being dealt with in such cause or matter without deducting any payment to creditors or parties interested after the commencement of the cause or matter, for every 100*l.*, or portion of 100*l.*, of the amount or value thereof ..... 0 1 0
72. On taking an account of moneys received by an executor, administrator, trustee, agent, solicitor, mortgagee, co-tenant, partner, receiver, guardian, consignee, bailee, manager, provisional official, or other liquidator, sequestrator, or execution creditor, or other person liable to account, for every 100*l.* or fraction of 100*l.* of the amount found to have been received without deducting any payment 0 1 0
- [NOTE.—The percentage is to be taken on the amount found to have been received in any periodical account: *Re Crawshay*, W. N. (1888), 167.]
73. On taking an account of the debts or ascertaining the amount of any debt due from a deceased person or from any company in any cause or matter when any creditor shall be required to prove his debt otherwise than by production of his security, for every 100*l.* or fraction of 100*l.* of the amount found to be due to such creditor, or (if more than one) of the aggregate amount found to be due to all such creditors ..... 0 1 0
74. And in any such case, if after evidence adduced by the creditor his claim shall be disallowed, on each such claim ..... 0 10 0
75. On taking an account of, or ascertaining the amount due in respect of the debentures or bonds of a joint stock or other company, for every 100*l.* or fraction of 100*l.* of the aggregate amount found to be due 0 2 0
76. On an inquiry to ascertain the heir and next-of-kin, or the heir or next-of-kin of any one or more than one deceased person whose estate is being administered in any cause or matter or in respect of whose estate an application is made under Order LV., rule 3, and on any such inquiry at chambers upon an application under the Act 10 & 11 Vict. c. 96 (The Trustee Relief Act) or Lands Clauses Consolidation Act, 1845, or any other Act whereby the



Schedule.	purchase-money of any property sold is directed to be paid into Court .....	£ s. d.
77.	On settling a list of shareholders entitled to a return, where there is any money to be returned, or a list of contributories, for every person settled on either such list not exceeding 2,000 .....	1 0 0
78.	On settling under the 13th section of the Companies Act, 1867, the list of the creditors of a limited company which proposes to reduce its capital ....	0 2 0
79.	On settling a scheme pursuant to the Railway Companies Act, 1867, or the Liquidation Act, 1868 ..	5 0 0
80.	On settling a scheme for the management of a charity	2 0 0
81.	On a certificate of a Chief Clerk, Taxing Master, or District Registrar of the result of any proceeding or taxation of costs before him, including one or any number of matters .....	0 10 0

The amount on which the fee No. 69 is payable shall not include the amount which may be payable out of the money raised to any mortgagee or other person entitled to any charge, estate, or interest on or in the property sold when such mortgagee or other person is not in respect of his mortgage, charge, estate, or interest a party to the cause or matter in which the order is made or bound by the proceedings although he may consent to or concur in the sale.

The amount on which the fee No. 71 is payable shall not include any outstanding debts believed to be bad or irrecoverable, nor any property the value of which is undefined or uncertain, nor any property to which the fee No. 69 is applicable, nor any money on which the fee No. 72 shall be payable in the same cause or matter.

The amount on which either of the fees No. 70 and 72 is payable shall not include any sum of money or any money arising from the sale of any property upon which either of the fees No. 69 and 71 shall have been previously paid.

The value of any stocks, funds, debentures, securities, shares, or other property, the price of which is quoted in the London Daily Stock and Share List, published by the authority of the Committee of the Stock Exchange, to which the fee No. 71 is applicable, shall be the closing price quoted in such published list on the day previous to the fixing the amount of such fee.

When the fee No. 72 shall be applicable to any money received which shall be invested or deposited in a bank, and again be received from such investment or deposit, or shall be paid by one person accounting to any other person accounting in the same cause or matter, or in any other similar case, the fee shall not be payable twice on the same money in the same cause or matter.

When a fee shall be payable on the money raised by the sale of property, and the same property shall be resold, in the same cause or matter, the fee payable on the first sale shall be deducted from the fee payable on the second sale.

The amounts for or in respect of which the following fees are payable shall be limited to 200,000*l.* in the following cases—(a) the amount raised at any time or times in the same cause or matter in the cases to which the fee No. 69 is applicable; (b) the amount of purchase-money to be invested pursuant to any one order in the

cases to which the fee No. 70 is applicable; (c) the amount in the same cause or matter of the value of the outstanding or undisposed of estate whenever ascertained in the cases to which the fee No. 71 is applicable; (d) the amount at any time or times in the same cause or matter found to have been received by any executor, administrator, or trustee in the cases to which the fee No. 72 is applicable, except in the case of a trustee directed to account periodically, and in that case, and in all other cases to which the fee No. 72 is applicable, the amount found to be due by any one certificate or on any one account; (e) the amount at any time or times in the same cause or matter found to be due to a creditor or creditors in the cases to which the fee No. 73 is applicable; (f) the amount found to be due in respect of debentures or bonds in the cases to which the fee No. 75 is applicable.

[NOTE.—The limit of 200,000*l.* fixed by this rule as to fee No. 69, applies to cases where the limit has been reached, irrespective of the number of orders under which the sale or mortgage has been effected: *Re Oriental Bank Corporation*, 56 L. T. 731. As to fee No. 72, the percentage is payable on the amount found to have been received on any periodical account: *Re Crawshaw*, W. N. (1888), 167. Where the accounts are not passed, a fee should be paid proportionate to the work done in Chambers: *Re Crawshaw* (*ubi sup.*).]

The fees Nos. 69 to 80 inclusive shall become due and payable by the party conducting the proceedings to which they apply as part of his costs of such proceedings, and be allowed as follows or otherwise as the Court or a Judge shall direct; that is to say, the fee No. 71 shall become due and payable upon making the certificate or order by which the outstanding or undisposed of estate is ascertained or as to any part thereof the value of which is at that time undefined or uncertain, and which during the further proceedings in the cause or matter shall be realised or the value of which shall be ascertained upon any order or certificate made when or after the same shall be so realised or the value thereof ascertained. The fee No. 72 on taking the account of a receiver, guardian, consignee, bailee, manager, liquidator, sequestrator, or execution creditor, or a trustee directed to pass his accounts periodically shall, upon payment, be allowed in the account, unless otherwise ordered by the Court or a Judge. The fee No. 72 in the other cases to which it applies, and the fees Nos. 69, 70, and 73 to 80 inclusive, shall become due and payable by the party conducting the proceeding, on making the certificate or order on the result of the sale, purchase, account, inquiry, or other proceeding to which the fee is applicable; but if the Court or a Judge shall be of opinion that the costs of the party liable to the payment of any such fees will become payable out of any funds or moneys in Court or to be brought into Court, the Court or Judge may suspend the payment of any such fees until such funds or moneys are dealt with, or for such other time as may be thought fit, in which case the amount payable shall be stated in the certificate or order upon which the same are payable, or in some subsequent certificate or order, and where such fees have not been paid, and the costs are directed to be paid out of money in Court or out of the proceeds of securities in Court, the Taxing Master shall certify the amount of fees payable in respect of such proceedings, and the Paymaster shall, if so provided by the Rules under the Supreme Court of



Schedule. Judicature (Funds, &c.) Act, 1883, carry over the amount so certified to be payable from the account to which such moneys or proceeds are placed to a separate account in the books of the Pay Office for fees on proceedings or otherwise as shall be provided by such Rules, and the amount shall from time to time, as the Treasury may direct, be paid to the account of Her Majesty's Exchequer.

[NOTE.—Where accounts are referred to an accountant, and adopted by the Chief Clerk, and certified, the percentage payable under the Orders of the Court will still be payable: *Re Hutchinson*, 32 W. R. 392.]

Queen's Bench and other proceedings. ON PROCEEDINGS IN THE QUEEN'S BENCH AND PROBATE, DIVORCE AND ADMIRALTY DIVISIONS, EXCEPT IN ADMIRALTY ACTIONS, BEFORE A MASTER REGISTRAR OR DISTRICT REGISTRAR.

82. The fee No. 72 on taking accounts applicable to pro- £ s. d.  
ceedings in the Chancery Division upon similar  
proceedings in these Divisions—
83. On every other reference, investigation, or inquiry,  
including examination of witnesses, if any, for  
every hour or part of an hour the officer is occupied 0 10 0

ON PROCEEDINGS IN THE PROBATE, DIVORCE AND ADMIRALTY DIVISION,  
IN ADMIRALTY ACTIONS ON REFERENCES BEFORE A REGISTRAR OR  
DISTRICT REGISTRAR.

84. On any reference to the Registrar, including exami- £ s. d.  
nation of witnesses, if any, having regard to the From  
nature and importance of the accounts and other 5 5 0  
matters, and to the time occupied ..... } to  
15 15 0
85. If the attendance of one or more merchants is re- From  
quired, for each merchant the same fees as to 5 5 0  
the Registrar..... } to  
15 15 0
86. In cases of great intricacy, or very large amount,  
occupying more than two full days, larger fees  
may be taken, not exceeding five guineas additional  
per day to the Registrar and for each merchant,  
for every day beyond two full days.
87. In cases where the accounts to be investigated do } From  
not exceed 500*l.*, and where the time occupied 1 1 0  
is short, fees may be taken for the Registrar } to  
and each merchant of ..... } 4 4 0

PROCEEDINGS BEFORE AN OFFICIAL REFEREE.

Official referees. 88. On every reference ..... 5 0 0

[NOTE.—By Order as to Supreme Court Fees, December, 1887, *post*, p. 694, in proceedings before an official referee in London or Middlesex, a fee of 10*s.* for every hour or part of an hour the referee is occupied is substituted for the above fee of £5.]

89. And for every hour or part of an hour he is occupied  
beyond two full days ..... 0 10 0
90. On every sitting elsewhere than in London or  
Middlesex a further fee for every night the  
Official Referee shall be absent from London .... 1 11 6
91. And for his clerk ..... 0 15 0



The fees Nos. 82 to 91 inclusive shall become due and payable by the party conducting the proceedings on the report of the result of the reference or otherwise as hereinafter provided where no such report is made.

The above-mentioned fees Nos. 69 to 80 and 82 to 91 inclusive shall be due and payable, when no certificate, report, or order is made, by the party conducting the proceedings on the completion of such proceedings, or if not completed a due proportion shall be payable on so much of the proceedings as shall have taken place, the amount to be fixed by the officer.

In these cases the fees shall be paid by stamps impressed upon or affixed to a memorandum stating on what account such fees are paid.

A deposit of stamps on account of the fees applicable to any proceeding may be required before such proceeding is commenced, or at any time during the course thereof, and in Admiralty actions, when Order LVI., rule 4, applies, such stamps shall be affixed as therein provided, and in all other cases a memorandum of the amount deposited shall be delivered to the party making the deposit.

## IN THE ADMIRALTY MARSHAL'S OFFICE.

	£	s.	d.	Admiralty Marshal's office.
92. On the execution of a warrant .....	2	0	0	
93. On the execution of an attachment, for every person attached .....	1	0	0	
94. On the execution of any decree, order, commission, or other instrument under Order LXVII. ....	1	0	0	
95. On attending, appointing, and swearing appraisers	1	0	0	
96. On delivering up a ship or goods to a purchaser agreeably to the inventory .....	1	0	0	
97. On attending the delivery of cargo, or sale or re- moval of a ship or goods, per day .....	2	0	0	
98. On retaining possession of a ship with or without cargo, or if a ship's cargo without a ship, to include the cost of a shipkeeper, if required, per day	0	5	0	
99. On a report as to the sufficiency of sureties .....	0	10	0	
100. If the Marshal or any of his substitutes is required to go a greater distance than five miles from his office to perform any of the above duties, he shall be entitled to his reasonable expenses for travelling, board, and maintenance, in addition to the above fees.				
101. On the sale of any vessel or goods sold pursuant to a decree or order of the Court for every 50 <i>l.</i> or fraction of 50 <i>l.</i> realised .....	0	10	0	

## TAXATION OF COSTS.

			Taxation of costs.
102. On taxing a bill of costs where the amount allowed does not exceed 4 <i>l.</i> .....	0	2	0
103. Where the amount exceeds 4 <i>l.</i> for every 2 <i>l.</i> allowed or a fraction thereof .....	0	1	0

These fees, unless otherwise provided, shall be taken on

Schedule.

signing the certificate or on the allowance of the bill of costs as taxed; but the fees shall be due and payable, if no certificate or allocatur is required, on the amount of the bill as taxed, or on the amount of such part thereof as may be taxed, and the solicitor or party suing in person shall in such case cause the proper stamps (the amount thereof to be fixed by the officer) to be impressed on or affixed to the bill of costs.

The taxing-officer may require a deposit of stamps on account of fees before taxation not exceeding the fees on the full amount of the costs as submitted for taxation, and the officer or his clerk on taking such deposit shall make a memorandum thereof on the bill of costs.

Order V., rule 58, of the Chancery Funds Consolidated Rules, 1874, shall continue to be acted upon in cases to which it is applicable.

This rule is now repealed, and rule 67 of the Supreme Court Funds Rules (*post*, p. 745) substituted for it. The repealed rule and the present are identical in effect.

Pay office of  
Supreme  
Court.

ON PROCEEDINGS IN THE PAY OFFICE OF THE SUPREME COURT.		£ s. d.		
104.	On a certificate of the amount and description of any money, funds, or securities, including the request therefor .....	0	1	0
105.	On a transcript of an account for each opening, including the request therefor .....	0	2	0
106.	On a request to the Paymaster, Bank of England, or a Registrar of the Probate Divorce and Admiralty Division (unless otherwise provided), for any of the following purposes : paying, lodging, transferring, or depositing money, funds, or securities in Court without an order, or money in addition to the amount directed by an order to be paid in; paying out of Court any money without an order or a certificate of a taxing officer; information in writing in respect of any money, funds, or securities, or any transaction in the Pay Office .....	0	1	0
107.	On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the Paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during fifteen years.....	0	2	6
108.	On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in Court pursuant to the statute 10 & 11 Vict. c. 96 .....	0	1	0
109.	On preparing a power of attorney .....	0	3	0

REGISTER OF JUDGMENTS AND *LIS PENDENS*.

## Schedule.

Register of judgments.

	£	s.	d.
110. On registering a judgment or <i>lis pendens</i> , although more than one name may have to be registered ..	0	2	6
111. On re-registering same .....	0	1	0
112. On a search for each name .....	0	1	0
113. On a certificate of entry of satisfaction .....	0	1	0
114. On a request for a search and certificate pursuant to Order LXI., rule 23 .....	0	5	0
115. If more than one name included in the same request, for each additional name .....	0	2	0
116. On a duplicate certificate, if not more than three folios .....	0	1	0
117. For every additional folio .....	0	0	6
118. On every continuation search, if requested within fourteen days of any former search (the result to be endorsed on such certificate) .....	0	1	0
119. On a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit .....	0	2	0
120. On filing for registration a certificate issued out of the Courts of Dublin or Court of Session in Scotland under the last-mentioned Act, although more than one name may have to be registered under the said Act .....	0	7	0
121. On every certificate of the entry of a satisfaction under the last-mentioned Act .....	0	1	0
122. On a search made in one or both of the registers of Irish and Scotch judgments for each name .....	0	1	0

## MISCELLANEOUS.

## Miscellaneous.

123. On a report of a private Bill in Parliament .....	5	0	0
124. On an allowance of byelaws or table of fees .....	1	0	0
125. On a fiat of a Judge .....	0	5	0
126. On signing, settling, or approving an advertisement .....	0	10	0
127. On taking the acknowledgment of a deed by a married woman .....	1	0	0
128. On an appointment of a receiver in a Probate action .....	1	0	0
129. On taking a recognizance or bond, whether one or more than one recognisor or obligor, and whether entered into by all at one time or not .....	0	10	0
130. On assignment of a bond .....	0	5	0
131. On taking bail, and taking same off the file and delivering .....	0	2	0
132. On a commitment .....	0	5	0
133. On an application to produce Judges' notes .....	0	5	0
134. On appointment of commissioners under glebe exchange .....	1	0	0
135. On vacating a recognisance .....	0	10	0
136. On a citation .....	0	5	0



## ORDER AS TO SUPREME COURT FEES, 1884.

Schedule.

	£	s.	d.
137. On the admission or re-admission of a solicitor . . . .	5	0	0
138. On filing a claim in the Admiralty Registry for re- payment of the excess of wages paid to a substitute hired in the place of a volunteer into the Royal Navy, including copy sent to the Admiralty . . . .	0	10	0
139. On the opinion of the Admiralty Registrar objecting to the claim . . . . .	0	10	0
140. On a certificate of the Admiralty Registrar ordering payment of amount due, including the copy to be sent to the Accountant-General of the Navy ..	0	10	0
141. On registering in the Admiralty Registry a power of attorney for a Queen's ship generally, and a copy thereof for the Accountant-General of the Navy . . . . .	1	10	0
142. On registering same specially . . . . .	0	10	0
143. On taking accounts by the Admiralty Registrar in Naval prize matters . . . . .	0	5	0
144. On Admiralty Registrar writing letters in regard to Naval prize matters . . . . .	0	10	0
145. On every 50 <i>l.</i> , or fraction of 50 <i>l.</i> , paid out of the Admiralty Registry in any action, or to the Naval Prize Account . . . . .	0	5	0

No fee is payable on the transfer of money from the Admiralty Registry to the Naval Prize Account.

(Signed) SELBORNE, C.  
COLERIDGE, C. J.  
W. B. BRETT, M. R.  
JAMES HANNEN,  
Pres<sup>t</sup>. P. D. A. Div<sup>n</sup>.

We concur in the above Order,

(Signed) C. C. COTES,  
H. J. GLADSTONE,

Lords Commissioners of Her Majesty's Treasury.

## ORDER AS TO SUPREME COURT FEES (OCTOBER), 1884.

I, the Right Honourable Roundell, Earl of Selborne, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do

hereby, in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling me in this behalf, order and direct in manner following:—

The fees hereunder written are fixed and appointed to be, and shall be, taken on appeals brought on or after the 24th day of October, 1884, from inferior Courts, notwithstanding anything in the Order as to Supreme Court Fees, 1884, contained.

	£	s.	d.
On filing .....	0	10	0
On hearing .....	1	0	0
On drawing up judgment .....	0	10	0

The 21st day of August, 1884.

SELBORNE, C.  
COLERIDGE, C. J.  
W. B. BRETT, M. R.  
C. E. POLLOCK, B.

We concur,

CHARLES C. COTES,

HERBERT J. GLADSTONE,

Lords Commissioners of Her Majesty's Treasury.

## ORDER AS TO THE FEES AND PERCENTAGES

WHICH ARE REQUIRED TO BE TAKEN IN THE SUPREME COURT OF  
JUDICATURE BY MEANS OF STAMPS.

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WHEREAS, by Section 26 of the Supreme Court of Judicature Act, 1875, it is provided that the fees and percentages appointed to be taken in the High Court of Justice and in the Court of Appeal, and in any Court to be created by any Commission, and in any office which is connected with any of those Courts or in which any business connected with any of those Courts is conducted, shall, except so far as may be otherwise directed, be taken by means of stamps; and further, that such stamps shall be impressed or adhesive, as the Treasury may from time to time direct; and that the Treasury, with the concurrence of the Lord Chancellor, may from time to time make such rules as may seem fit for publishing the amount of the fees and regulating the use of such stamps, and particularly for prescribing the application thereof to documents from time to time in use or required to be used for the purposes of such stamps, and for ensuring the proper cancellation of such stamps, and for keeping accounts of such stamps.

Now we, the undersigned, being two of the Lords Commissioners of Her Majesty's Treasury, do, with the concurrence of the Lord Chancellor, hereby give notice and order and direct—

**R. 1.**  
Stamps to be  
used as pre-  
scribed in  
schedule.

**R. 2.**  
Adhesive  
stamps.

**R. 3.**  
Deposit of  
stamps.

1. That from and after the date at which this order shall come into operation the stamps used for denoting the said fees and percentages shall be of the character, and be applied and otherwise dealt with in the manner, prescribed in the schedule hereto.

2. That the adhesive stamps at present in use in the Supreme Court of Judicature shall continue to be used so long as they are supplied by the Commissioners of Inland Revenue.

3. That in any case in which a deposit of stamps is required, pursuant to the Order as to Supreme Court Fees, 1884, such deposit shall be made in the manner provided by such Order.

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**Schedule.**

**THE SCHEDULE ABOVE REFERRED TO.**

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The official forms, with impressed or adhesive stamps (as the case may be), required in any Court or Office of the Supreme Court, in



respect of any proceedings herein referred to, may be obtained at the Inland Revenue Offices, Royal Courts of Justice.

Schedule.

Forms and stamps for use in the Principal Probate Registry (which except for searches are all adhesive), can be purchased from the licensed vendors at Somerset House.

## SUMMONSES, WRITS, COMMISSIONS, AND WARRANTS.

Summonses,  
&c.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On sealing a writ of summonses for commencement of an action .....	Writ of summonses.	Impressed.	
On sealing a concurrent, renewed, or amended writ of summonses for commencement of an action .....			
On sealing a notice for service under Order XVI., rule 48.	Notice ....	Impressed or adhesive.	
On sealing a writ of mandamus .....	Præcipe left at time of issuing writ ....	{ Impressed, adhesive in Probate Registry.	
On sealing a writ of subpoena not exceeding three persons			
On sealing a writ of execution, a subpoena pursuant to the Court of Probate Act, 1858, section 23, and every other writ .....	Summons..	Impressed.	
On sealing or issuing any originating summonses.	Præcipe ..	Adhesive.	
On amending same .....	Summons..	Impressed or adhesive.	
On sealing or issuing a summons for directions under Order XXX.	Summons or warrant.	Impressed or adhesive.	
On sealing or issuing any other summonses or taxing-master's warrant.	Notice ..	Impressed.	
On filing a notice to have a reference to an Admiralty Registrar placed in the list for hearing .....			
On a notice in Admiralty actions pursuant to Order LXVII., rule 10 .....	Commission	Impressed.	
On sealing or issuing a commission to take oaths or affidavits in the Supreme Court.			
On every other commission ..	Commission	Impressed, adhesive in Probate Registry.	{ The commission or the copy of petition to be written on impressed paper, or the document to be produced at the Inland Revenue Office to be stamped.
On marking a copy of a petition of right for service.	Copy of petition.	Impressed..	

Schedule.Appearances.

## APPEARANCES.

The fee payable on entering or amending an appearance shall be denoted by an impressed stamp on the form of memorandum as prescribed by the Appendix to the Rules of the Supreme Court, 1883, and where the appearance of more than one person is entered by the same memorandum, the fees for all persons beyond the first shall be denoted by means of impressed stamps.

Forms of memorandum of appearance with the impressed stamp for one or more defendants will be sold at the Inland Revenue Office, Royal Courts of Justice.

Copies.

## COPIES.

	Document to be Stamped.	Character of Stamp to be used.
On a copy of a written deposition of a witness to enable a party to print the same.	Copy....	Impressed or adhesive.
On examining a written or printed copy, and marking or sealing same as an office copy.	Copy....	Impressed or adhesive.
On making a copy and marking same as an office copy.	Copy....	Impressed or adhesive.
On a copy in a foreign language .....	Copy....	Impressed or adhesive.
On a copy of a plan, map, section, drawing, photograph, or diagram.	Præcipe or copy.	Impressed or adhesive.
On a printed copy of an order, not being an office or certified copy.	Copy....	Impressed or adhesive.

Attendances.

## ATTENDANCES.

The fees payable under this heading to be denoted either by an impressed or adhesive stamp on the subpoena, notice, or other document requiring the attendance of the officer.

Oaths, &c.

## OATHS, &amp;c.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On taking an affidavit or an affirmation or attestation upon honour in lieu of an affidavit or a declaration, except for the purpose of receipt of dividends from the Paymaster General.	Affidavit or other docu- ment answer- ing thereto.	Impressed or adhesive.	

Schedule.

	Document to be Stamped and character of Stamp to be used.	Regulations and Observations.
And in addition thereto for each exhibit therein referred to and required to be marked.	Stamps to be impressed or adhesive on affidavit.	The amount of stamps should be marked on the office copy.

FILING.Filing.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On filing a special case or petition of right.	Special case, petition of right or præcipe.	Impressed ..	Where practicable, stamp to be on special case or petition of right, and in other cases on præcipe filed.
On filing, except in Admiralty actions, an affidavit, deposition, or set of depositions (including any exhibits annexed to any such affidavit or deposition), statement of claim in default of appearance, official and special referees' certificates, petition, preliminary act, submission to arbitration, award, warrant of attorney, cognovit, bail, satisfaction piece, bond, writ of execution with return, and power of attorney, and every other proceeding in a Probate action or in a Divorce or other Matrimonial cause or matter required by Act of Parliament, general order, or order in the action, cause, or matter, to be filed in the Principal Probate Registry.	Document filed	Impressed or adhesive.	
On filing a scheme pursuant to the statute 30 & 31 Vict. c. 127, or the Liquidation Act, 1868.	Scheme .....	Impressed.	
On filing scripts in a Probate action, or on depositing, pursuant to an order in any cause or matter, any documents for safe custody or production.	Affidavit or Order.	Adhesive.	



Schedule.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a receipt for any document or documents to which the two last fees apply, when delivered out, or for any other document or documents when delivered out of the Principal Probate Registry.	Receipt .....	Adhesive.	
On filing an affidavit and notice under Order XLVI., rule 4.	Affidavit ....	Impressed.	
On every minute in Admiralty actions pursuant to Order XLVI., rule 8, for every instrument or document to which the minute relates (other than an exhibit, or any instrument or document previously issued from the Registry or the Marshal's Office).	Minute .....	Impressed or adhesive.	
On filing a bill of sale and affidavit therewith.	Bill of Sale ..	Impressed.	
On filing under the Bills of Sales Acts, 1878 and 1882, any other document.	Document ..	Impressed.	
On filing an affidavit of re-registration of a bill of sale.	Affidavit ....	Impressed.	
On filing a fiat of satisfaction.	Fiat .....	Impressed.	

## Certificates.

## CERTIFICATES.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a certificate of appearance or of a pleading, affidavit or proceeding having been entered, filed, or taken, or of the negative thereof, including certificate for use in a foreign country, and certificate of proceedings pursuant to Order LXI., rule 24.	Certificate....	Impressed or adhesive.	

Schedule.

## SEARCHES AND INSPECTIONS.

Searches and inspections.

The fees on searches and inspections shall be taken by means of impressed stamps on a form of application which will be issued and sold at the Inland Revenue Office, Royal Courts of Justice; or, for the Principal Probate Registry, at Somerset House.

## EXAMINATION OF WITNESSES.

Examination of witnesses.

The fees under this heading may still be denoted by means of adhesive stamps, which may be affixed either to the deposition or to the order or memorandum of appointment for an examination.

## HEARING.

Hearing.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On entering or setting down, or re-entering or re-setting down, an appeal to the Court of Appeal, or a cause or matter for trial or hearing in any Court in London or Middlesex, or at any Assizes, including hearing or further consideration when no fee was paid on the original hearing, whether on summons adjourned from Chambers or otherwise, and including special case, a petition in a divorce or matrimonial cause or matter by which a proceeding is commenced, and petition of right, but not any other petition, nor any other summons adjourned from Chambers.	In the Chancery Registrar's Office, on forms provided for the purpose. At offices of Associates, on copy of pleadings. At all other offices of the High Court or Court of Appeal, on præcipe.	} Impressed. } Impressed or adhesive. } Impressed or adhesive in Probate Registry.	
On entering directions of the Judge at a trial and certifying same if required.	Certificate ..	Impressed or adhesive.	
On writing for the attendance of Trinity Masters or other assessors on the hearing of an Admiralty action.	Præcipe ....	Impressed.	
On answering and setting down for hearing in Court a petition by which any proceeding is commenced on any other petition.	Petition ....	Impressed.	

**Schedule.**Judgments,  
decrees, and  
orders.**JUDGMENTS, DECREES, AND ORDERS.**

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On drawing up and entering a judgment, decree, or order, whether on the original hearing of a cause or on further consideration, including a cause commenced by summons at Chambers, and an order on the hearing of a special case or petition, and any order by the Court of Appeal or any other order or judgment.	Judgment, decree, or order.	Stamp to be impressed on the judgment or order except at the Crown Office, where adhesive stamps may for the present be also admitted, but, as far as practicable, a præcipe, with an impressed stamp, should in all cases be used. Adhesive stamps to be used in the Principal Probate Registry.	
On signing a note or memorandum of an order, pursuant to Order LII., rule 14, when required for production, where no order is drawn up.	Note or memorandum.	Impressed or adhesive.	
On a memorandum to enter an order <i>nunc pro tunc</i> .	Memorandum.	Impressed.	
For copy of a plan, map, section, drawing, photograph, or diagram required to accompany any order.	Copy .....	Impressed or adhesive.	Where an adhesive stamp would damage the copy, a præcipe, with the impressed stamp, should be used.

Proceedings  
at Chambers,  
&c.*Proceedings at Judge's Chambers or before a Master, Registrar, District Registrar, or Official Referee.*

The fees payable on these proceedings shall be paid in the manner provided by the Order as to the Supreme Court Fees, 1884, either by impressed or adhesive stamps, and where any such fees become due and payable upon making a certificate or order they shall be impressed or attached on the certificate or order. When any such fee is impressed or attached on an order, the officer who enters the order shall note on the entry the amount of the fee appearing on the order; and where any such fee is impressed or attached on a certificate the amount thereof shall be noted on every office copy thereof.



## Schedule.

*In the Admiralty Marshal's Office.*

In the Admiralty Marshal's office.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On the execution of a warrant.	Warrant. ....	Impressed.	
On the execution of an attachment, for every person attached.	Attachment. .	Impressed or adhesive.	
On the execution of any decree, order, commission, or other instrument under Order LXVII.	Instrument . .	Impressed.	
On attending, appointing, and swearing appraisers.	Certificate of appraisal.	Impressed.	
On delivering up a ship or goods to a purchaser agreeably to the inventory.	Account sales.	Impressed.	
On attending the unlivery of cargo or sale or removal of a ship or goods, per day.	Certificate of execution.	Impressed.	The Marshal's certificate of execution shall be attached to document ordering the unlivery sale or removal. The Marshal's certificate of release shall be attached to the instrument of release.
On retaining possession of a ship with or without cargo, or of a ship's cargo without a ship, to include the cost of a ship keeper, if required, per day.	Certificate of release if property released. Account sales if property sold.	Impressed.	
On a report as to the sufficiency of sureties.	Report .....	Impressed.	
On the sale of any vessel or goods sold pursuant to a Decree or Order of the Court for every 50% or fraction of 50% realised.	Account sales.	Impressed.	

Schedule.Taxation of  
costs.

## TAXATION OF COSTS.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
For taxing a bill of costs.	Bill .....	Impressed or adhesive.	In any case in which the fees have not been paid by stamps on the bill of costs, and a certifi- cate is used, the fee to be denoted by impressed stamp on the certificate.
For a certificate of the result.	Certificate ..	Impressed.	

*On Proceedings in the Pay Office of the Supreme Court.*

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a certificate of the amount and description of any money, funds, or securities, includ- ing the request therefor.	Request .....	Impressed.	
On a transcript of an account for each opening, including the request therefor.	Transcript ..	Impressed.	
On a request to the Paymaster, Bank of England, or a Re- gistrar of the Probate, Divorce, and Admiralty Di- vision (unless otherwise pro- vided), for any of the fol- lowing purposes: paying, lodging, transferring, or depositing money, funds, or securities in Court with- out an order, or money in addition to the amount di- rected by an order to be paid in; paying out of Court any money without an order or a certificate of a taxing officer.	Request .....	Impressed.	
On a request for information in writing in respect of any money, funds, or securities, or any transaction in the Pay Office.	Request .....	Impressed or adhesive.	

## Schedule.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a request for information respecting any money, funds, or securities to the credit of any cause or matter contained in any list prepared by the Paymaster of causes and matters to the credit of which any money, funds, or securities have not been dealt with during fifteen years.	Request ....	Impressed or adhesive.	
On an affidavit for the purpose of paying, transferring, or depositing any money, funds, or securities in Court pursuant to the statute 10 & 11 Vict. c. 96.	Office copy of schedule.	Impressed.	
On preparing a power of attorney.	Power of attorney.	Impressed.	

## REGISTER OF JUDGMENTS AND LIS PENDENS.

Register of judgments and lis pendens.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On registering a judgment or lis pendens.	Memorandum of registry.	} Impressed.	
On re-registering same.	General form of search præcipe.		
On a search .....	Certificate ...		
On a certificate of entry of satisfaction.	Certificate ...	Impressed or adhesive.	
On a request for search and certificate pursuant to Order LXI., rule 23.	Certificate ...	Impressed or adhesive.	
On a duplicate certificate ....	Original certificate.	Impressed or adhesive.	
On a continuation search ....	} Certificate .	Impressed or adhesive.	
On a certificate of a judgment for registration in Ireland or Scotland under the Judgments Extension Act, 1868, including affidavit.			
On filing for registration a certificate issued out of Courts of Dublin or Court of Session in Scotland under the same Act.			
On every certificate of the entry of a satisfaction under the same Act.	} Præcipe ....	Impressed.	
On a search made in one or both of the Registers of Irish or Scotch judgments.			



Schedule.Miscellaneous.

## MISCELLANEOUS.

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.
On a report of a Private Bill in Parliament.	Report .....	Impressed.	
On an allowance of bye-laws or table of fees.	Allowance ..	Impressed.	
On a fiat of a judge .....	Fiat .....	Impressed.	
On signing, settling, or ap- proving an advertisement	Advertisement.	Impressed or adhesive in Probate Re- gistry.	
On taking acknowledgment of a deed by a married woman.	Acknowledg- ment.	Impressed.	
On taking a recognizance or bond.	Recognizance	Impressed.	
On assignment of a bond ....	Assignment..	Adhesive.	
On taking bail, and taking same off the file and deliver- ing.	Bail piece....	Impressed.	
On a commitment .....	Commitment .	} Impressed.	
On an application to produce judge's notes.	Application ..		
On appointment of Commis- sioners under glebe ex- change.	Appointment.	Impressed.	
On vacating a recognizance ..	Recognizance	Impressed.	
On a citation .....	Præcipe ....	Adhesive.	
On admission or re-admission of a solicitor.	Admission ..	Impressed.	
On filing a claim in the Ad- miralty Registry for repay- ment of the excess of wages paid to a substitute hired in the place of a volunteer into the Royal Navy, including copy sent to the Admiralty.	Claim .....	Impressed or adhesive.	
On the opinion of the Admiralty Registrar objecting to the claim.	Document ..	Impressed.	
On a certificate of the Ad- miralty Registrar ordering payment of amount due, in- cluding the copy to be sent to the Accountant General of the Navy.	Certificate ..	Impressed.	
On registering in the Admiralty Registry a power of attorney for a Queen's ship generally, and a copy thereof for the Accountant General of the Navy.	Power of at- torney.	Impressed.	
On registering same specially.	Power of at- torney.	Impressed.	
On taking accounts by the Admiralty Registrar in Naval Prize matters.	Account ....	Impressed or adhesive.	

	Document to be Stamped.	Character of Stamp to be used.	Regulations and Observations.	Schedule.
On Admiralty Registrar writing letters in regard to Naval Prize matters.	Document ..	Impressed or adhesive.		
On every 50%, or fraction of 50%, paid out of the Admiralty Registry in any action, or to the Naval Prize Account.	Account ....	Impressed or adhesive.		
Any other proceeding, pleading, or document, not hereinbefore specified.	Document or præcipe.	Impressed or adhesive.	These are to be impressed if practicable where not filed in the office.	

## GENERAL DIRECTIONS.

General directions.

In any case in which the use of impressed stamps is prescribed, paper or parchment on which the document requiring a stamp is to be written may be stamped at the Inland Revenue Office, Royal Courts of Justice, notwithstanding that stamped forms are also provided by the Commissioners of Inland Revenue.

The cancellation shall be effected in such manner as the Commissioners of Inland Revenue shall from time to time direct.

It shall be obligatory on all officers of the Supreme Court charged with the duty of cancelling adhesive stamps, to see that all such stamps, although obliterated by a written or printed cancellation, be afterwards cancelled by means of perforation.

This Order shall come into operation on the 18th day of July, 1884.

Dated the 4th day of July, 1884.

CHARLES C. COTES.

R. W. DUFF.

Two of the Lords of Her Majesty's Treasury.

I concur in this Order,

SELBORNE, C.

## ORDER AS TO SUPREME COURT FEES, DECEMBER 1887.

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I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, by and with the advice and consent of the undersigned Judges of the Supreme Court, and with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance and execution of the powers given by the Supreme Court of Judicature Act, 1875, and all other powers and authorities enabling me in this behalf, order and direct in manner following :—

In proceedings before an Official Referee in London or Middlesex the fee on every reference, in lieu of the fee of 5*l.* prescribed by the Order as to Supreme Court Fees, 1884, shall be for every hour or part of an hour the Referee is occupied, including examination of witnesses, if any, 10*s.*

The 20th day of December, 1887.

(Signed) HALSBURY, C.  
COLERIDGE, L.C.J.  
NATH. LINDLEY, L.J.  
EDW. FRY, L.J.

We concur in the { SIDNEY HERBERT,  
above order { HERBERT EUSTACE MAXWELL,  
Lords Commissioners of Her  
Majesty's Treasury.



# CENTRAL OFFICE PRACTICE RULES.\*

OFFICE RULES SETTLED BY THE PRACTICE MASTERS, 1880, 1881, 1882.

*Documents to be filed in the Writ and Appearance and Summons and Order Departments.*

Originating summonses issued from Chancery Chambers.

Petitions of right.

Affidavits of service.

Lower scale certificates (Chancery).

Schemes of arrangement under Railway Abandonment Act.

Pleadings left on entering judgment (order xli. rule 1).

Pleadings and other documents filed under order xix. rule 6 [*now r. 10*], in default of appearance.

Writs and returns to writs, orders, &c.

All documents required by rules or orders of court to be filed, such as warrants of attorney, and cognovits on signing judgments (rule 25, of Hilary, 1853), orders for assessment of damages and masters' findings thereon (rule 171; of Hilary, 1853 [*now O. XLI. r. 8*]), also satisfaction pieces and orders to satisfy, strike out, or amend any judgment or proceeding, or directing any act to be done in the office (except Chancery orders and orders of court in Queen's Bench Division). [A copy of the order marked that the original was produced may be taken at the discretion of the officer in cases in which the original is required to be retained by the parties.]

All pleadings to be entered in the cause-books are to be opened and stamped on the day of filing, with the date seal at the top of the front page, and returned to the General Filing Department on Monday morning in each week.

Copies writs filed.

Præcipes for writs of execution.

Præcipes for subpœnas and miscellaneous writs.

Appearances.

Lower scale certificates.

Certificate of costs.

All these should be sent to the General Filing Department when more than a year old.

Filing in Writ,  
&c., Depart-  
ment.

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\* The references in italics in square brackets refer to the corresponding rules in the R. S. C. 1883.

**Cause Book,  
&c.**

Orders of commitment and returns thereto may be filed and indexed in the writ, &c., department in the same way as (and with) writs of execution.

*Cause Book, Distinctive Marks, and Indexes.***Cause books,  
&c.**

Actions and matters in the title of which a limited company is first must be indexed under the first letter of the first word or initial.

Courtesy titles of eldest sons of Peers are not to govern the distinctive mark which is to follow the surname, viz., "Campbell," and not "Marquis of Lorne."

In cases, such as Mayor and Corporation of, &c., the initial letter of the city or borough should govern the distinctive mark.

Owners of ships by name of ship.

Overseers of parishes by names of parish.

Names in which "de" occurs as part of the surname, or is preceded only by Christian names, should be indexed under "D."

Foreign companies should be indexed under the initial letter of the first word in their name, *e.g.*, Banco de Lima under "B," Société d'Acclimatation, "S."

Foreign titles should be indexed under the initial letter of the proper or local name in the title, *e.g.*, Comte de Paris under "P," Duc de Montebello under "M."

The Christian and surnames of all parties to an action should be entered in full in the cause book.

Parties are not to be allowed to see the cause book unless by express leave obtained from a master or an order by a judge.

All searches in the cause book for writs of summons or otherwise are to be made by the clerks in the Central Office, and the result communicated to the party applying.

When a certificate is given, and no inspection of a præcipe is required, only one fee of 1s. to be taken (or 4s. if higher scale).

A separate index is to be kept of writs in administration actions and of administration summonses, which index the public may search without fee.

Separate books are to be kept for entering returns to writs of execution.

No other books to be kept for entries except the cause books (and desk book for facilitating reference). The judgment books may be kept in the cause book room with the cause books, or in a separate room.

*Writs of Summons, Appearances, and Amendments.***Writs,  
appearances,  
amendments.**

Copies of writs of summons should be signed with the name of the solicitor or solicitors' clerks suing them out as under:—

C. D. and Co.  
or A. B.  
for C. D. and Co.

The stamp is to be on the copy writ filed.

In the Chancery Division an order of course to amend a writ of summons as the plaintiff may be advised will not justify an

alteration that strikes out the name of any plaintiff or defendant, or makes a person out of the jurisdiction a party.

Writs of  
Summons, &c.

In all the divisions an amendment of a writ of summons may be made by leave of a master (on payment of fee) before service. A plaintiff can be struck out only by special leave given in the order to amend; a defendant, by special leave, or on the written statement (to be filed) of the plaintiff's solicitors that a notice of discontinuance under order xxiii. [*now O. XXVII.*] has been duly given.

In Chancery actions an amendment to a writ of summons pursuant to an order of Court or Judge, may be made either on an undertaking to get the order drawn up, or on a separate memorandum or certificate being left for filing, signed or initialled by the Judge or registrar, showing the order to have been made.

In an information, where there is no relator, the Attorney-General's signature on the writ is not required; but where there is a relator (whether a person or body corporate) the original writ (not the copy filed) must be signed by the Attorney-General, and if any amendment be made, it must be authorized by his signature on the original writ or draft.

In entering appearances a note should be made in the cause books "Statement of claim required" or "Statement of claim not required," and in cases where the action is for recovery of land, and the defence is limited, a further note to that effect should be added.

If no time is specified in an order to amend, the amendment must be made within 14 days.

No writs are to be issued in Probate Division causes unless on a certificate that the affidavit required by order v. rule 10 [*now r. 15*], has been filed.

Where appearances are entered in the Central Office in Probate and Admiralty Division actions, a list or copy of the appearances entered shall each day be addressed and sent to the principal registrars of the Probate and Admiralty Divisions. Such list to be made out at the close of the day by one of the junior clerks in the writ, &c., department.

If a solicitor has caused an appearance to be entered by mistake, the mistake may be rectified with the consent in writing of the solicitor for the plaintiffs, and on the fiat (on the production of such consent) of a practice master to be given on a *præcipe* with a 2s. 6d. (search) stamp.

A defendant in person may change his address for service (without order to change address) by leave of master, but must forthwith give notice to the other side.

If a writ of summons has been lost the filed copy may, for the purpose of amendment, or for any other purpose, be treated as a duplicate, but only by leave of a practice master, and on the party giving an undertaking to produce the original at the Central Office when found.

Writs of summons issued before the Judicature Acts came into force may be renewed without an order.

A female plaintiff must be described as "spinster," "married woman," or "widow," and if an infant, as an infant.

Where an infant or married woman is plaintiff the authority of



Substituted  
Service, &c.

the next friend (duly attested) must be filed before the writ of summons can be issued.

*Substituted Service. Affidavit of Service.*

Substituted  
service.

Unless the order shall otherwise direct, a copy of the order and of the writ shall be deemed to have been served on the day following the day on which a prepaid letter containing such copy shall have been posted.

*Subpoenas.*

Subpoenas remain in force only till the end of the sitting or assize for which they were issued. A new writ must afterwards be issued or the former writ may be (at the option of the parties) altered as to date and sitting, or assize, and re-issued as a new writ.

The date of return in the writ and præcipe may, before service, be amended without the direction of a master, and without fee, provided the amended date be within the sitting or assize for which the subpoena issued.

A subpoena in an interpleader issue should be headed in the title of the original action, and in the title of the interpleader issue, and should be applied for in, and issued out of, the room in which the writ of summons in the original action was issued.

*Removal by Appearance to London of Actions commenced in District Registries.*

A fresh London distinctive mark to be given.

No separate district registry cause book to be kept.

No letter need be sent to the district registrar.

Writs of summons issued out of a district registry cannot be amended by order or fiat of master unless the action has been removed to London by appearance or otherwise.

No writ issued out of a district registry can be amended in the Central Office unless the duplicate filed in the district registry has been previously received in the Central Office.

If it becomes necessary to send to London (for amendment or otherwise) the copy writ filed in the district registry, authority may be given to send the copy writ to the Central Office by sealing a duplicate of the præcipe for appearance, which shall be transmitted to the district registrar by the solicitors concerned.

*Distringas.*

When the settlement comprises more than one sum, and the sums are in the shares or securities of different companies, a separate affidavit and notice should be made for each company, and the affidavit should be that the funds comprise "amongst others" the sum of, &c. [specifying the sum in the books of the one company], and a stamp of 10s. will be required for each separate notice.

If there are more sums than one, but all in the books of the Bank of England, or in the books of any one company, one affidavit and notice will be sufficient for all the sums.

In actions not specifically assigned to the Chancery Division by the Judicature Act, 1873, s. 34 (*i.e.*, so-called common law actions brought in the Chancery Division), no certificate of lower scale shall

be given out till after appearance. In the cause books such actions shall be distinguished by the letters L.S. Filing Pleadings, &c.

When deposited documents, or documents on the file, are ordered to be delivered to a solicitor, on his undertaking to return them, he must sign a receipt and undertaking to return (which may be indorsed on the order), and leave the order and indorsement at the Central Office to be returned to him on his bringing back the documents. The signature of the solicitor must be witnessed by his clerk, or by some one known to the officer delivering out the documents.

#### *Pleadings and Documents filed in Default.*

None of these documents will be placed in the bundles containing the writs of summons and pleadings filed on entering judgment, but will be made up into two sets of separate bundles.

The first containing all statements of claim filed in default.

The second containing summonses, warrants to tax, notices, and miscellaneous documents.

All these documents must have the date of filing and the name of the defendant against whom they were filed written on them, and be entered in the cause books under the head of pleadings, such entry to show the date of filing, nature of document, and name of defendant against whom they are filed.

None of these documents will (for the present) be delivered out without an order, but any defendant against whom documents have been filed may, after appearance, inspect the same without fee.

#### *As to Filing generally.*

In the Chancery Division, judgments, orders, notices of motion for attachment, and other documents requiring personal service, cannot be filed in default of appearance without an order or leave of a master, and no pleadings or other documents can be filed under order xix. rule 6 [*now rule 10*], unless an affidavit of service under order xiii. rules 2 and 9, or an office copy thereof, be first produced to the officer.

#### *Orders and Judgments.*

When parties have not drawn up their orders on the day of the hearing of the summons, the solicitor shall, before having his order issued, take it to the filing office, and having indorsed on the back the words "The affidavits referred to within are on the file," the seal will be affixed to certify that the affidavits are filed. Such certificates will have the same effect as producing the affidavits on drawing the order.

As to County Court certificate of result of trial, no fee to be charged for search.

Judgment may be signed on a certificate of "No affidavits filed in answer to interrogatories," or on a certificate of non-payment of money into Court without affidavit.

On entering judgments under order xli. rule 1, in actions in the Chancery Division, when drawn up by the chancery registrars, the engrossment of the judgment together with the pleadings to be filed shall be brought to the writ appearance and judgment department, and the officer receiving the same shall make a note in the margin



Orders and  
Judgments.

of the engrossment that the pleadings have been filed, and shall authenticate such note with the small seal of the office, and return the engrossment to the solicitor.

The date of the judgment as shown by the engrossment of the order and the date of leaving the pleadings shall be entered in the cause book.

The solicitor on leaving the pleadings must indorse thereon and sign a certificate in the words or to the effect following:—

“I certify that these are all the pleadings required to be left for filing.”

When judgment is signed under order xli. rules 4 and 5, on any order, certificate, or other document, such document shall be filed.

Original stamped judgment to be filed and office copy to be delivered out at *6d.* a folio. The judgment need not be signed by the solicitor entering it.

If judgment removed from Lord Mayor's Court the fixed cost of removal to be one guinea in all cases.

An allocatur for costs is to be placed on a certificate in the form settled.

Judgments are to be numbered consecutively in each alphabetical division in the right-hand corner, and the number entered in the cause book.

In cases where the plaintiff is entitled to a final judgment as to part of his claim, and to an interlocutory judgment as to the remainder, one judgment only is necessary, final as to part and interlocutory as to the rest, and one fee paid.

In the case of cross judgments in the same action where after a trial there is a direction for judgment for plaintiff against some of the defendants, and for some of the defendants against the plaintiff, and also for some of the defendants against the others, the whole direction may be embodied in one judgment, and the different parties may take office copies for use.

Date of filing of pleadings filed on entering judgment and of certificates of costs are to be entered in cause books and on the documents.

*As to the Costs of Removing Judgments from Inferior Courts for  
Purposes of Execution.*

The order should direct that the party removing the judgment have his costs of and relating to the removal (to be taxed).

*As to Common Pleas Judgments between November, 1875, and  
April, 1880.*

Any office copy required may be made from the copy filed in the office and issued as an office copy of the original judgment, unless there shall be some special reason against doing so, in which case the parties shall be referred to a practice master.

As to writs of attachment issued in pursuance of an order for making default in payment of a sum of money made in any case excepted by the 4th section of the Debtors Act, 1869, from the operation of that section, these should have a note stating that the writ does not authorize an imprisonment for any longer period than one year.

NOTE.—All questions of practice, sufficiency of affidavits, &c., are to be referred to a practice master, and not to any other master.



# ADDITIONAL OFFICE RULES

SETTLED BY THE PRACTICE MASTERS, MARCH, 1884.

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*(These Rules embody the alterations and additions made by the Practice Masters, in May, 1886.)*

## *As to Signing Copy Writ. (Order V., r. 12.)*

The signature to the statement of claim indorsed on the writ is not to be taken as a sufficient compliance with the rule requiring the writ to be signed.

## *Lost Writ. (Order VIII., r. 3, Fee, &c.)*

When a copy writ is sealed in lieu of the original, under the above rule, no fee is to be taken.

A note should be made on the face of the copy near the seal, showing that it is so sealed under the above rule pursuant to order, setting out the name of the Judge, and date of the order, and an entry made in the cause-book of the sealing and name of the Judge, date of order, and date and time of filing.

## *Originating Summonses.*

Originating summonses in the Chancery Division are to be issued in the same manner as writs of summons. The stamp denoting the fee is to be put on the copy filed, and the original sealed and delivered to the party issuing, but no other duplicates or copies for service are to be sealed.

All other originating summonses are to be issued in the summons and order department in the same manner as ordinary summonses for chambers.

## *Assigning Judge.*

The assignment to a particular Judge of every cause or matter commenced in the Chancery Division (otherwise than by petition) shall be made *before* the issue of the writ or summons or service of the notice of motion.

## *Appearance after Judgment.*

When a memorandum of appearance by a defendant is handed in without a previous search for judgment (for which search the

**Office Copies  
of Judg-  
ments, &c.**

proper fee should be taken) and judgment has been signed, the appearance must not be entered in the usual way, but the stamp on the memorandum of appearance must be retained as a used stamp, and not treated as fit for allowance. The duplicate is not to be sealed, but the party who has handed in the memorandum may be informed without further payment that judgment has been signed. A note should, in such cases, be made in the cause book that a memorandum of appearance was brought in after judgment signed, and the fee should be accounted for amongst the appearance fees.

*Office Copies of Judgments (and Searches for).*

An office copy of a judgment may be obtained in the same manner as an office copy of any other document on a fiat of a Judge or Master.

On an application on behalf of a judgment creditor for an office copy of a judgment for bankruptcy proceedings, no fee for the search to be taken or required.

When application is made to produce a judgment for the purpose of setting it aside or otherwise a search fee of 2s. 6d. is payable.

*As to a Certificate of Judgment in the Queen's Bench Division for use in a Foreign Country.*

The party bespeaking a certified office copy must first obtain a printed form impressed with a 5s. stamp, and leave it in the Writ Department, together with the proper fees for the office copy and a form of bespeak. The certificate and copy when completed and signed will be delivered out at the general filing seat.

*Judgments, Court Fees, 1884.*

On entering judgments on certificates of registrars of County Courts and on returns to writs of inquiry and on official or special referees' certificates the fee of 10s. is to be taken.

*Depositions, &c. Filing Fee.*

No copy of any deposition or other document requiring a filing fee shall be issued or examined until such filing fee shall have been paid.

*Filing Documents. Date and Time of Filing.*

Every document left for filing must be marked with the year, day, hour, and minute when so left, and if filed in Writ and Appearance Department, an entry made thereof in the cause-book, or if there is no cause or matter there, then in an index-book.

*Filing Masters' Certificates.*

*Order XLI., r. 8.* (No. 576.) This rule is to apply to certificates or awards made on references under the C. L. P. Act, 1854, which must be filed. (A 2s. 6d. fee is payable on filing these as awards.)

*Orders by Consent.*

An order is not to be drawn up upon a consent, signed by a party or his solicitor, written upon a summons, unless it has been initialled by a Judge or Master.

*As to Satisfaction of Judgments.*

The rules of Hilary Term, 1853, as to entering satisfaction of judgments having been annulled by the R. S. C., 1883, the mode of entering satisfaction of judgments in the Q. B. D. will in future be by order of a Judge or Master obtained in the same manner as an order for satisfaction is obtained of a bill of sale on an order of the Registrar under Order LXI., rules 26 and 27.

*As to Satisfaction of Bills of Sale.*

If the attesting witness and deponent is a solicitor, and described as such, the entry of the satisfaction will be directed by the Registrar (the papers being otherwise correct) as of course; but under special circumstances the Registrar may accept any other deponent if satisfied that he is a proper person to attest and verify the signature and consent.

*As to Cognovits and Warrants of Attorney.*

The filing for the purpose of signing judgment shall be either by registering the original or by filing the original (before signing judgment) in the Bills of Sale Department. A certificate of the filing shall in either case be given by that department, which certificate shall show the parties to the cognovit or warrant of attorney and the amount for which judgment is to be signed. Judgment may be signed on this certificate being produced and filed in the Writ, Appearance, and Judgment Department.

*As to Writs of Elegit.*

From 1st January, 1884, the new form (which under the Bankruptcy Act, 1883, s. 146, does not extend to goods) is only to be used. And the amount indorsed to be levied for *costs of the execution*, including warrant, but exclusive of inquisition and expenses of execution, is not to exceed 2*l.*, without the express leave of a Master.

*As to Subpœnas and Orders for the attendance of Witnesses.*

For attendance before an arbitrator under an agreement or order by consent referring action or matter in difference to arbitration.

Or before a Master upon a reference under the C. L. P. A., 1854.

Or for attendance of any person in any cause or matter before trial for producing documents at any stage of the proceedings under Order XXXVII., r. 7, of R. S. C., 1883.

For attendance before an officer of the Court or other person appointed to take an examination for the purpose of using witness's evidence upon any proceeding in a cause or matter, or for cross-examination on affidavit already made, Order XXXVII., r. 20.

On proceedings in Chambers, Order XXXVII., r. 28. *If proceedings before a Master, a note from him sufficient.*

For attendance upon trial before a Judge, or before an official or special referee when trial ordered to take place before a referee.

ORDER NOT  
SUBPœNA  
(See 3 & 4 W.  
4, c. 42, and  
C. L. P. Act,  
s. 7.)

SUBPœNA  
ad test. or  
duces tecum  
to be issued as  
of course.

SUBPœNA  
on a note  
from a judge.

SUBPœNA  
ad test. or  
duces tecum  
as of course.



**Subpœnas, &c.** Or for attendance before an officer of the Court to whom it has been referred to ascertain the amount for which final judgment is to be entered under Order XXXVI., r. 57 (Queen's Bench Division).

Order XXXVI., rr. 49, 57. Or on execution of a writ of inquiry.

For witnesses residing out of the jurisdiction of the Court, but within the United Kingdom, an order of Court or of a Judge for a subpœna to issue. The subpœna to have a note at the foot showing that it is issued by the special leave of Court or Judge. (17 & 18 Vict. c. 34, ss. 1 and 2; 47 & 48 Vict. c. 61, s. 16.)

Order LXXII., r. 2. In all other cases not specially provided for by Acts of Parliament or Rules of Court the old practice to continue.

The subpœna is to be marked legibly in the margin near the seal, with the number of witnesses for which it is issued, *e. g.*, "For three witnesses only."

The fee of 5s. is payable for not exceeding three witnesses, and the like fee for every additional three and for any less number beyond.

Subpœna to remain in force only until the end of the sitting or assize for which it is issued. [See Order XXXVII., r. 34, as to Service.]

#### *As to Costs of Judgment by Default.*

If for a sum exceeding 50*l.* on specially indorsed writs issued on or after 25th January, 1884 (Statement of Claim)—

	£	s.	d.
Country and agency cases and in cases where service effected more than five miles from General Post Office, St. Martin's-le-Grand .....	5	6	0
Town cases .....	4	14	0
And in addition for each extra service .....	0	6	0

The above allowances to include all mileage.

If writ indorsed for a liquidated claim exceeding 50*l.*, but not specially, and in all cases in which sum recovered amounts to 20*l.* and upwards, but does not exceed 50*l.*, on writs issued on or after 25th January, 1884, except on bills of exchange—

	£	s.	d.
Country and agency cases, or where service effected more than five miles from General Post Office, St. Martin's-le-Grand .....	4	12	0
Town cases .....	4	0	0
And in addition for each extra service .....	0	6	0

#### *£20 to £50.*

If action on bill of exchange or promissory note and under Order XIV. :—

	£	s.	d.
Town .....	3	17	10
Agency .....	4	4	0
Each extra service .....	0	6	0

The above allowances to include all mileage.

In cases under 20*l.* no costs unless a Judge's order for costs.

In cases where the writ was issued prior to 25th January, 1884, the old scale of allowances to be made, viz. :—

Costs of  
Judgment by  
Default.

*On Writs issued prior to 24th October, 1883.*

	£	s.	d.
Country, &c. ....	4	6	0
Town .....	3	14	0
And in addition for each extra service .....	0	6	0

*On Writs issued on or after 24th October, 1883, down to and inclusive of 24th January, 1884, above 50l.*

	£	s.	d.
Country, &c., special indorsement (Statement of claim) .....	5	0	0
Town .....	4	8	0
And in addition for each extra service .....	0	6	0

*And in Cases not exceeding 50l., or where the Writ is indorsed for a Liquidated Claim, but not specially.*

	£	s.	d.
Country, &c. ....	4	6	0
Town cases .....	3	14	0
And in addition for each extra service .....	0	6	0

*Substituted Service.*

In cases of 20l., not exceeding 50l., upon an order for substituted service, 6l. may be allowed for costs without taxation.

Under special circumstances parties may tax where judgment against other defendants on personal service or otherwise.

*Fixed Costs in Cases of Judgment under Order XIV. for Sums not exceeding 50l., as settled by Mr. Justice Field, November, 1883.*

	£	s.	d.
Town cases .....	6	10	0
Country .....	7	0	0

And 6s. extra for each additional defendant. "And any extraordinary costs that have been incurred" may be added by the Master.

The amount of costs should be inserted in the order for judgment.

Under special circumstances parties may tax, *ex. gr.* where judgment against other defendants on personal service or otherwise.

*Fixed Costs of Judgment under Order LXV., Rule 27, Sub-section 38.*

	£	s.	d.
Costs .....	1	10	0

The Master will give a certificate for the above amount for costs of judgment, without taxation of such costs. This regulation will be particularly applicable to judgments for costs under Order XXII., rule 7 (for non-payment of costs on payment into Court), and to judgments for non-payment of costs under Order XXVI., rule 3

**Summons and Order Department.** (for non-payment of costs on discontinuance), and will also be applicable to any other case where parties are entitled to sign judgment for costs of judgment, either alone or in addition to other costs previously taxed and allowed.

*Form of Certificate for Costs usually adopted in such Cases.*

I certify that the costs of the \_\_\_\_\_ have been taxed and allowed at £ \_\_\_\_\_ (and the costs of judgment, if, and when, signed, in case the above costs are not paid, at 1*l.* 10*s.*).

(Signature.)

*Summons and Order Department.*

A duplicate (*i.e.*, a copy on which no fee is payable) of all orders dealing with moneys in Court in the Queen's Bench Division must be sent by this department to the General Filing Department immediately after the orders are drawn up, such duplicate to be stamped with the official seal of the Summons and Order Department in order that an office copy may be afterwards obtained by the parties from the General Filing Department for the use of the paymaster.

The above orders must be drawn up in the form given in the new rules, which can be procured at the room where stamps are issued.

When any of the orders mentioned below are drawn up, a copy (to be made in the Stationer's Department, and stamped with the seal of the Summons and Order Department) shall be sent to the General Filing Office to be filed. The order shall, if possible, be ready for delivery out on the afternoon of the day after it is bespoken:—

For appointment of receiver.

For injunction.

For attachment or committal.

To inspect banker's books.

Interpleader orders by which provision is made for payment of money into Court.

Charging orders under 1 & 2 Vict. c. 110, s. 14, and 3 & 4 Vict. c. 82.

And any other special order which, in the opinion of the officer drawing it up, ought to be recorded.

*Writs of Summons.*

Where a married woman sues or is sued under the Married Women's Property Acts, it must appear on the face of the writ that she is suing or sued in respect of her separate estate.

A writ against defendants, one or some of whom appear to be out of the jurisdiction, may be issued without an order for service having been first obtained, but such writ must be specially sealed with a notification on (and as part of) the writ that it is "not for service out of jurisdiction without order."

When a memorandum of appearance by a defendant is handed in



without a previous search for judgment (for which search the proper fee should be taken) and it is afterwards found that judgment has been already signed, the appearance must not be entered in the cause-book, and the stamp on the memorandum of appearance must be retained as a used stamp, and not treated as fit for allowance. The duplicate is not to be sealed, but the party who has handed in the memorandum, if he desires to know, at the time, whether judgment has been already signed, may be so informed without further payment. A note should, in such cases, be made in the cause-book that a memorandum of appearance was brought in after judgment signed, and the Fee should be accounted for amongst the appearance fees.

Any amendment or alteration to be made (before service) in an originating summons (in the Chancery Division) must be made on the fiat of a Master, but before procuring such fiat the præcipe for the amendment or alteration must be initialled by the chief clerk. This only applies to an amendment before service or before any proceeding has been taken on the summons, and does not apply to an amendment to be made by an order of the Court.

If a writ is specially endorsed with a "statement of claim" under Order III., r. 6, a plaintiff may amend (pursuant to Order XXVIII., r. 2) statement of claim (on copy filed) once without fiat as well after as before service. In any other case where an amendment is required to such endorsed statement of claim, if the writ has not been served the amendment must be made on fiat, or if the writ has been served then by order in Chambers upon payment of the amendment fee.

On signing judgment after trial the copy pleadings filed under Order XLI., r. 1, shall in all cases where practicable be the copy obtained from the Associate (Master).

If the writ is not specially endorsed "a statement of the nature of the claim" only and not "a statement of claim" should be endorsed on the writ.

#### *Fees.*

When a notice to a *co-defendant* is sealed under rule 55 of Order XVI., the same fee is to be taken as for a notice to third party sealed under rule 48 of same Order. (See Fee, No. 3.)

Directions for the issue of writs of summons, whether for service abroad or otherwise, and whether endorsed on the affidavit or writ itself, must in all cases bear a 3s. stamp, duly obliterated, and until this is done such directions are not to be acted upon in the writ department.

#### *Interlocutory Judgment, Order XIII., r. 5.*

After interlocutory judgment in default of appearance a copy of the summons order and appointment thereon for ascertaining the value or amount of damages for which final judgment is to be entered shall be filed as directed by Order LXVII., r. 4. And on applying for an order to be drawn up for the assessment of damages on a judgment in default of appearance the judgment must be produced and the affidavit must show that a copy of the summons was served by being duly filed in the Central Office.

Deposit of  
Effects in  
Court.

*As to Deposit in Court of Valuable Effects.*

When an Order is made for depositing in Court any valuable articles (such as jewellery, &c.) the following directions should be observed:—

The original Order and an office copy of it are to be taken to and produced at the Bank of England (Law Courts Branch) with the box containing the articles—the Office Copy Order is to be left with the box at the Bank with a request in the following form:—

HIGH COURT OF JUSTICE, QUEEN'S BENCH DIVISION.

*Request for Lodgment of Effects or Securities.*

TITLE OF CAUSE OR MATTER.

v. [1883 A. No. ]

LEDGER CREDIT TO WHICH LODGED. [*If same as Title of cause state "as above."*]

To the Cashier of the Bank of England, }  
Law Courts Branch. }

Please receive the accompanying box on account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature, which box is lodged by [

Dated this            ]. day of            , 188 .

## INSPECTION OF RECORDS, DOCUMENTS FILED, INDEXES, BOOKS, &c.

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APPLICATIONS UNDER ORDER LXI., R. 24.

### *Writ Appearance and Judgment Rooms.*

1. Any person may, upon payment of the proper fee, obtain any information which can be derived from inspection of the cause-books, in any cause or matter of which he can give the reference number and the general description.

2. Any party to a cause or matter is entitled as of right to inspect all documents and proceedings in such cause or matter upon payment of the proper fee.

3. On an application for a general search of the cause-books, or for inspection of a document or record by a person not a party to the cause or matter, the senior clerk will consider the propriety of allowing such search or inspection. In any case of doubt, he is to refer the applicant to the practice-master for the day.

4. In administration actions and causes, all creditors, legatees, next of kin, and beneficiaries under the will, have the same rights of inspection as a party.

5. A separate index is to be kept of the titles and dates of commencement of all administration suits, which index is to be open to the inspection of all persons during office hours without fee.

### *Filing and Record Room.*

*General.*—The Chancery Registrar's books and the volumes of chief clerks' and taxing-masters' certificates are open to general inspection. Depositions and all proceedings in the Queen's Bench Division are open to the inspection of parties only.

*Affidavits.*—The clerks shall satisfy themselves of the propriety of allowing an inspection by a person not being a party, and in cases of doubt refer the applicant to the practice-master.

### *General Direction.*

Before a question is referred or put to a practice-master a note of it must be initialled by the senior clerk of the room with his opinion.



Issue of Writ  
of Summons  
for Service  
out of  
Jurisdiction.

ORDER II., R. 4. ORDER XI., RR. 1 AND 5.

*As to Issue and Service of Writ of Summons or Notice in lieu of Service out of the Jurisdiction.*

It being necessary that the order under Order XI., r. 5, for leave to serve the writ or notice thereof be drawn up before it can be acted upon, whether for the purposes of judgment or otherwise, it is directed (in order to avoid the expense of a stamp on a fiat for the issue of the writ) that an order be drawn up, which order shall include leave to issue the writ and to serve the same or notice thereof, and should specify the kingdom, colony or place where the service is to be effected, and limit the days allowed for defendant to appear.

27 May, 1886.

## LIVERPOOL AND MANCHESTER REGISTRIES.



Chancery actions commenced in the above registries pursuant to Rules of the Supreme Court December, 1886, and May, 1887, and assigned by the direction of the Lord Chancellor to a Judge under Order V. r. 9, must on removal to London remain assigned to such Judge until ordered to be transferred to some other Judge or until further order.

11th August, 1887,

As amended 12th December, 1887.

## DISTRICT REGISTRY.



When papers are sent up to the Central Office from a District Registry for the purpose of appeal:

If the appeal be to the Judge in Chambers they are to be sent to the Summons and Order Department, and are to be returned to the District Registrar by that department.

If the appeal be from the Judge to the Court or direct to the Court the papers are to be sent up (or handed over as the case may be) to the Associate Department to be returned by that department to the District Registry.

14th December, 1887.

## JUDGMENT BY DEFAULT AGAINST MARRIED WOMAN.

When application is made for judgment against a married woman in default of appearance, inasmuch as the execution will be limited in the manner directed by the Court of Appeal in *Scott v. Morley*, 20 Q. B. D. 120, it will not be necessary to require an allegation to be inserted in the statement of claim that the married woman was entitled to separate estate at the time the contract was entered into.

Judgment  
against  
Married  
Woman.

30 June, 1888,

[In substitution for direction dated 6th December, 1887].

## PAROCHIAL CHARITIES ACT, 1883.

All summonses in the matter of the Parochial Charities Act, 1883, are to be marked with the name of Mr. Justice Kay.

12th December, 1887,

## LIVERPOOL COURT OF PASSAGE AND SALFORD HUNDRED COURT.

On removal of judgments from the other Courts the amount of costs to be allowed will be the sum of £2 2s. 0d., which sum should be included in the order for removal or execution.

22nd March, 1888.





order appointing the receiver if the execution creditor should desire it.

4. When the proper time arrives for passing the receiver's first account, an ordinary appointment must be made with a Master, and notice of the appointment given to the other side. The Master will then go through the account, and, on the same being properly vouched and stamped, will approve it. The receiver, on bringing in the account, will make and file the usual affidavit verifying it, and the Master will (if required) give a certificate of the account having been passed. The account should be left with the Master for transmission to the General Filing Department.

Directions as  
to Appoint-  
ment of  
Receivers.

#### LIST OF GUARANTEE SOCIETIES.

1. The Guarantee Society.
2. The London Guarantee and Accidental Society (Limited).
3. Provident Clerks and General Guarantee Association (Limited).
4. Employers' Liability Assurance Company (Limited).
5. Law Guarantee and Trust Society (Limited).

## TITLES TO ORIGINATING SUMMONSES, &c.

The following regulations are to be observed as far as practicable:—

Administration summonses and summonses under Order LV., rule 3, are to be entitled,

In the matter of the *Estate* of A. B., deceased.

Between C. D., Plaintiff,  
and  
E. F., Defendant.

or,

In the matter of the *Trusts of the Settlement* made on the marriage of A. B. with C. D., dated, &c.

F. G., Plaintiff.  
G. H., Defendant.

or, where the instrument creating the trust is other than an indenture of settlement,

In the matter of the *Trusts of an Indenture* dated , and made between A. B. of the one part, and C. D. of the other part.

F. G., Plaintiff.  
H. I., Defendant.

Summonses under Order LV., rule 5a, for redemption or foreclosure of mortgage, are to be entitled as heretofore as in an action, not in a "matter," thus:—

Between A. B., Plaintiff  
C. D., Defendant.

**Titles to  
Originating  
Summonses,  
&c.**

**PETITIONS AND ORIGINATING SUMMONSES UNDER ACTS OF PARLIAMENT  
GIVING SUMMARY JURISDICTION.**

In all cases where a petition is presented or an originating summons is issued under the authority of an Act of Parliament giving summary jurisdiction or rules of Court, the petition or summons must be entitled in a substantial matter (*as the first title*), and also in the matter of the particular Act as well as any general Act applicable, such as the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, or the Mortgage Debenture Acts, 1865 and 1870, or the Copyhold Acts, or the Defence Act, 1860, or the Improvement of Land Act, 1864, or the Tramways Act, 1870, or the Consolidated Permanent Charges Redemption Act, 1873, or the Trustee Act, or the Settled Land Act, &c., or otherwise, as the case may be, for instance:—

1. If it be a railway or other local Act, and under its powers a portion of any estate under settlement, or of the estate of any testator or intestate has been taken, the petition or summons must be entitled in the matter of such settlement or of the estate of such testator or intestate, and in the matter of the credit to which the money has under the special Act been paid, and in the matter of the general Act or Acts.

**Example 1.  
Lands Clauses  
Acts.**

1886, W., No.

In the matter of the estate of George Woolley, deceased.  
*Ex parte* the South Devon Railway.

In the matter of the South Devon Railway Act, 1844, the vendors John Smith and Robert Stiles, trustees of the estate of George Woolley, deceased, vendors without power of sale, and,

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869 (*as the case may be*).

**Example 2.  
Lands Clauses  
Acts.**

1866, T., No.

In the matter of the estate of William Thomas, an infant.  
*Ex parte* the Metropolitan Board of Works.

In the matter of the Metropolitan Street Improvement Act, 1883.

The vendor William Thomas, an infant.

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

**Example 3.  
Lands Clauses  
Acts.**

1886, I., No.

In the matter of the trusts of the settlement made on the marriage of John Jarvis and Sarah, his wife.

*Ex parte* the Metropolitan Board of Works.

In the matter of the Metropolitan Street Improvement Act, 1883.

The vendors John Smith and Robert Jones, trustees of settlement of John Jarvis and Sarah his wife, without power of sale.

In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.

2. If land belonging to a rector, vicar, or other corporate body, then it must be entitled, *ex parte* the rector, vicar, or corporate body as the case may be, and in the matter of the Act or Acts.

- |  |   |
|--|---|
| <p style="text-align: right; margin-right: 20px;">1886, W., No.</p> <p><i>Ex parte</i> the rector of Woolwich in the county of Kent.<br/> <i>Ex parte</i> the South Eastern Railway Company.<br/>                 In the matter of the South Eastern Railway Act (Additional Powers), 1882. The vendor, rector of Woolwich, without power of sale.<br/>                 In the matter of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869.</p>   | <p><b>Titles to<br/>Originating<br/>Summonses,<br/>&amp;c.</b></p> <hr style="width: 100%;"/> <p>Example 4.<br/>Lands Clauses Acts.</p> |
| <p>3. If under the Parliamentary Deposits Act, it must be in the same title as that to which the fund stands in the Chancery Pay Office, and of the Act.</p>   |   |
| <p style="text-align: right; margin-right: 20px;">1886, A., No.</p> <p>In the matter of the undertaking of the A. B. Railway Bill (<i>as the case may be</i>), and,<br/>                 In the matter of the Act of Parliament, 9 Vict. c. 20, entitled an Act to amend an Act of the second year of Her present Majesty for the custody of certain moneys paid in pursuance of the standing orders of Parliament by subscribers to works or undertakings to be effected under the authority of Parliament.</p> | <p>Example 5.<br/>Parliamentary Deposits Act.</p>   |
| <p>4. If to deal with money in Court under the <i>Legacy Duty Act</i>, it must be in the same title as that under which the fund stands in the books of the Chancery Pay Office, <i>and</i> in the matter of the Act 36 Geo. III., c. 52.</p>  |   |
| <p style="text-align: right; margin-right: 20px;">1886, G., No.</p> <p>In the matter of John Greaves, an infant legatee (or J. G., absent beyond the seas), and in the matter of the Act 36 Geo. III., c. 52, entitled "an act," &amp;c.</p>   | <p>Example 6.<br/>Legacy Duty Acts.</p>   |
| <p>5. If under the <i>Trustee Act</i>, in the matter of the trusts of the will or other instrument and of the Act.</p>   |   |
| <p style="text-align: right; margin-right: 20px;">1886, S., No.</p> <p>In the matter of the trusts of the will of John Smith, of , dated 4th July, 1832.<br/>                 In the matter of the Trustee Act, 1850 (<i>add where applicable</i>), and of the Act 15 &amp; 16 Vict. c. 55, entitled "An Act to extend the provisions of the "Trustee Act, 1850."</p>  | <p>Example 7.<br/>Trustee Act.</p>  |
| <p>6. If under <i>private Acts</i>, should be entitled in the matter of the title to the Act.</p>  |   |
| <p style="text-align: right; margin-right: 20px;">1886, B., No.</p> <p>In the matter of an Act (<i>state session</i>) Victoria, cap. (<i>state chapter</i>) for empowering the trustees of the estate of A. B. deceased to grant leases and for other purposes.</p>  | <p>Example 8.<br/>Private Act.</p>  |
| <p>7. If under the Settled Land Act, 1882, it must be entitled in accordance with the rules of the Supreme Court (December, 1882) under that Act, and in the form given in the appendix to such rules as varied by the form Appendix L., No. 25, R. S. C., 1883.</p>   |   |
| <p style="text-align: right; margin-right: 20px;">1886, J., No.<br/>or, 1886, R., No.</p> <p>In the matter of the Blackacre Estate [<i>or</i>, of the timber on the estate], situate at , in the county of<br/>                 [<i>or</i>, of the chattels] settled by the settlement, dated the day of , made on the marriage of John</p>  | <p>Example 9.<br/>Settled Land Acts, 1882 and 1884.</p>   |



**Titles to  
Originating  
Summonses,  
&c.**

Jones and Mary his wife [*or*, by the will of George Roberts,  
dated                   ].  
And in the matter of the Settled Land Act, 1882.

**Example 10.  
Infant.**

1886, S., No. .  
In the matter of the Blackacre Estate [*or*, of the timber on the  
estate], situate at                   , in the county of                   ,  
settled land within the meaning of the Settled Land Act,  
1882, sec. 59, by reason of John Smith, the person seised of  
or entitled to such land being an infant.  
In the matter of the Settled Land Act, 1882.

**Example 11.  
Tenant by  
curtesy.**

1886, R., No. .  
In the matter of the Blackacre Estate at                   , in the  
county of                   , settled by a settlement within the  
meaning of the Settled Land Act, 1884, sec. 8, by Mary  
Roberts, deceased, the late wife of John Roberts.  
In the matter of the Settled Land Act, 1884.

**Example 12.  
Vendor and  
Purchaser  
Act, 1874.**

8. If under the Vendor and Purchaser Act. 1886, B., No. .  
In the matter of the contract dated the                    day of  
188                   , for sale of (Blackacre) Estate, situate at                   ,  
in the county of                   , and made between A. B. (vendor)  
and C. D. (purchaser).  
And in the matter of the Vendor and Purchaser Act, 1874.

**Example 13.  
Conveyancing  
and Law of  
Property Act,  
1881, s. 39.**

9. If under the Conveyancing and Law of Property Act, 1881. 1886, B., No. .  
In the matter of the trusts of the settlement, dated the                   ,  
made on the marriage of A. B. (husband) with C. D. (the  
wife).  
In the matter of the Conveyancing and Law of Property Act,  
1881.

**Example 14.  
Married  
Women's  
Property Act,  
1882, s. 11.**

10. If under the Married Women's Property Act. 1886, B., No. .  
In the matter of the policy of assurance in the Law Life  
Assurance Society on the life of A. B., No. 2,175.  
And in the matter of the Married Women's Property Act, 1882.

**Example 15.  
Married  
Women's  
Property Act,  
1882, s. 17.**

1886, B., No. .  
In the matter of the question between John Brown and Mary  
Brown his wife, as to certain property [*describe property  
shortly*].  
And in the matter of the Married Women's Property Act, 1882.

The address and description of the applicant and of the next  
friend (if any), and of the respondents, should in all cases be stated  
in the petition or summons, and if the applicants apply as, or the  
respondents are summoned as trustees, or in a representative  
capacity, the fact should appear; and the rule (if any) under which  
the application is made should be stated.

If the applicants or respondents are females it should be shown  
on the petition or summons whether they are spinsters, married  
women, or widows.

# SUPREME COURT OF JUDICATURE

## (FUNDS, &c.) ACT, 1883.

46 & 47 VICT. c. 29.

An Act to Consolidate the Accounting Departments of the Supreme Court of Judicature, and for other purposes.

[20th August, 1883.]

S. C. Jud.  
(Funds) Act,  
1883,  
ss. 1—3.

WHEREAS it is expedient that there should be but one accounting department for the Supreme Court of Judicature and all the Courts and Divisions thereof, and it is further expedient to amend certain provisions of the Chancery Funds Act, 1872, and to provide for facilitating the business of the said department :

35 & 36 Vict.  
c. 44, s. 1.

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. From and after the commencement of this Act there shall be one accounting department for the Supreme Court of Judicature.

Sect. 1.

Pay office of  
the Supreme  
Court.

2. All securities and money at the time of the commencement of this Act vested in the Paymaster-General in pursuance of the Chancery Funds Act, 1872, and all securities and money at any time after the commencement of this Act transferred or paid into or deposited in Court, to the credit of any cause, matter, or account, in the Chancery Division of the High Court of Justice, shall be vested in Her Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature, and shall continue to be and be subject to all the provisions of the Chancery Funds Act, 1872, and to the rules heretofore made and now in force under that Act, subject to such alterations therein and to such other and further rules as shall from time to time be made as thereby provided.

Sect. 2.

Funds in  
Chancery  
Division.

35 & 36 Vict.  
c. 44, s. 10.

3. (a.) The Lord Chancellor, with the concurrence of the Treasury, may at any time after the passing of this Act direct that all moneys in Court, or to be hereafter paid into Court, in any other division of the High Court of Justice, and all securities in Court placed or to be placed to the credit of any cause, matter, or account, in any such division, shall be transferred or paid, or placed (as the case may be)

Sect. 3.

Funds in other  
divisions.

**S. C. Jud.  
(Funds) Act,  
1883,  
ss. 3—6.**

to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature.

(b.) All moneys and securities transferred, paid, or placed to the said account or credit of the Paymaster-General under this section shall be held by the Paymaster-General for the time being in trust to attend the orders of the Court in regard thereto, and subject to rules to be made under this Act.

(c.) The Consolidated Fund shall be liable to make good to the suitors of the Court the moneys and securities so transferred, paid, or placed to the account or credit of the Paymaster-General.

By orders of the Lord Chancellor made on the 15th of February, 1884, all funds in the Q. B. Division, and the P. D. and A. Division were transferred to the Paymaster-General's account.

**Sect. 4.**

Power to  
make rules.

4. (1.) The Lord Chancellor, with the concurrence of the Treasury, may from time to time make rules for giving effect to the provisions of the last preceding section, and for regulating the manner in which, subject to the orders of the Court, the said moneys and securities shall be dealt with by the Paymaster-General, and may at any time revoke or alter any such rules.

(2.) The Treasury shall cause to be kept by the Paymaster-General such books and accounts, and in such form and manner, as they may from time to time direct, for the purpose of duly recording the transactions under the last preceding section; and the accounts kept by the Paymaster-General in respect of such transactions shall be audited by the Comptroller and Auditor-General in the manner and subject to the conditions prescribed in section twenty of the Chancery Funds Act, 1872.

Under this section the S. C. Funds Rules, 1884, were issued, which regulated the practice for the whole of the accounting department of the Supreme Court. The rules are now superseded by the S. C. Funds Rules, 1886. See *post*, p. 724.

**Sect. 5.**

Validity of  
payments, &c.,  
pursuant to  
Rules of  
Court.

5. All acts done by the Paymaster-General with reference to money and securities in Court (whether such money and securities be paid, transferred, or delivered into Court under this Act or under the provisions of the Chancery Funds Act, 1872), pursuant to and in accordance with the provisions of any general rules of the Supreme Court of Judicature made under the provisions of the Supreme Court of Judicature Act, 1875, and Acts amending the same, shall be as valid and effectual as if they had been done in pursuance of an order of the High Court of Justice or of the Court of Appeal.

38 & 39 Vict.  
c. 77.

**Sect. 6.**

Remittances  
by post.

6. If under any rules made by the Lord Chancellor, with the concurrence of the Treasury, or any regulations of the Treasury, the Paymaster-General be authorised to make payments of money to persons entitled thereto upon their request by transmitting by post to such persons crossed cheques or other documents intended to enable such persons to obtain payment of the sums expressed therein, the posting of a letter containing such cheque or document, and addressed to any such person entitled thereto at the address given by him in his request, shall as respects the liability of the Paymaster-General and of the Consolidated Fund respectively, be equivalent to the delivery of such cheque or document to such person himself.

See S. C. Funds Rules, 1886, r. 48, *post*, p. 740.



7. Any rules made by the Lord Chancellor, with the concurrence of the Treasury, under the provisions of the Chancery Funds Act, 1872, or this Act, may determine what evidence of an order of the High Court of Justice or Court of Appeal; and of the directions contained in such order, shall be necessary or sufficient, or necessary and sufficient to authorise the Governor and Company of the Bank of England, or any other person to transfer on sale or otherwise, or to deliver out, any securities or other things standing in the books of or deposited with such bank or person to the credit or account of the said Paymaster-General for the time being under this or the aforesaid Act; and such securities or things shall be transferred or delivered out accordingly, on behalf of the Paymaster-General, by some officer of such bank or person, anything in section ten of the Chancery Funds Act, 1872, to the contrary thereof notwithstanding.

S. C. Jud.  
(Funds) Act,  
1883,  
ss. 7, 8.

Sect. 7.  
Amendment of  
35 & 36 Vict.  
c. 44, s. 10.

8. This Act may be cited as the Supreme Court of Judicature (Funds, &c.) Act, 1883.

Sect. 8.  
Short title.

# CHANCERY FUNDS AMENDED ORDERS, 1874.

Ch. Funds  
Amended  
Orders, 1874,  
rr. 1—4.

UNDER THE COURT OF CHANCERY (FUNDS) ACT, 1872 (35 & 36 VICT. c. 44), AND THE TRUSTEE RELIEF ACT, 1847 (10 & 11 VICT. c. 96).

*The 22nd day of December, 1874.*

[These orders appear not to be repealed, except so far as they are inconsistent with S. C. Funds Rules, 1886, *post*, p. 724.]

Revocation of  
Chancery  
Funds Orders,  
1872, and  
commence-  
ment of these  
orders.

Interpretation  
of terms.

1. The Chancery Funds Orders, 1872, are hereby revoked, and these amended orders are substituted in lieu thereof, and shall come into operation on the 11th day of January, 1875, and may be cited as the "Chancery Funds Amended Orders, 1874."

2. In these orders, and in orders as herein defined, terms shall have the same meaning as the same terms are defined to have in the Court of Chancery (Funds) Act, 1872, and as prescribed by the Chancery Funds Consolidated Rules, 1874, and the term "Court" shall mean the Court of Chancery, and include a judge thereof, whether sitting in Court or at Chambers; and the term "order" shall include a decree; and the term "cause or matter" shall, in these orders, include a separate account in a cause or matter, and a matter intitled merely as an account; and words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number; and words importing males shall include females.

By S. C. Funds Rules, 1884, the Chancery Funds Consolidated Rules, 1874, were repealed.

[Rule 3 abrogated certain orders in Chancery, being the same as those abrogated by the Chancery Funds Consolidated Rules, 1874, r. 3.]

Notice of  
payment,  
transfer, or  
deposit on  
request.

4. A person who shall make a transfer or payment of money or securities into Court, or a deposit of securities in Court, as provided by rule 27 of the Chancery Funds Consolidated Rules, 1874, shall forthwith give notice thereof to the solicitors of the persons upon whose application the order directing such transfer, payment, or deposit was made, or to such persons if they have no solicitor; or if the order was made on the application of the person making such transfer or payment, to the solicitors of the other parties appearing on the application.

See S. C. Funds Rules, 1886, r. 36, *post*, p. 736, which takes the place of Chancery Funds Consolidated Rules, 1874, r. 27.

A person making a transfer, payment, or deposit upon request to the credit of a cause or matter, as provided by rule 25 of the said rules, shall forthwith give notice thereof to the solicitors on the record for the parties to the cause, or in case of a matter, to the persons interested, if known, or to their solicitors, if any, stating in such notice what the money or securities comprised in such transfer, payment, or deposit represent, and for what purpose such transfer, payment, or deposit has been made; and such notices may be sent by post.

Ch. Funds  
Amended  
Orders, 1874,  
rr. 4—9.

See S. C. Funds Rules, 1886, r. 30, *post*, p. 733, as to lodgment in Court of funds in the Chancery Division.

5. A person having made a payment or transfer of money or securities into, or a deposit of securities in Court under the above-mentioned Act of 10 & 11 Vict. c. 96, shall forthwith give notice thereof to the several persons named in his affidavit to be made in pursuance of rule 34 of the Chancery Funds Consolidated Rules, 1874, and the said Act, as interested in or entitled to such money or securities.

Notice of  
payment or  
transfer under  
Trustee Relief  
Act (10 & 11  
Vict. c. 96) to  
be given.

As to lodgments under the Trustee Relief Act, see S. C. Funds Rules, 1886, r. 41, *post*, p. 737.

As to the practice under the Act, see Dan. Pr., pp. 2065—2085; Morgan, pp. 50—60; 1 Seton, pp. 493—499; Dan. Forms, pp. 384—389.

6. The persons interested in or entitled to any money or securities so paid or transferred into, or deposited in Court, in pursuance of the said Act of 10 & 11 Vict. c. 96, and named in the affidavit, or any of such persons, or the person so paying or transferring into or depositing in Court, may apply by petition, or in cases where the fund does not exceed 300*l.* cash or 300*l.* in securities, by summons, as occasion may require, respecting the investment, payment out, or distribution of the money or securities, or of the dividends or interest of such securities.

Application by  
petition or  
summons.

See O. LV., r. 2 (5), *ante*, p. 401, under which the limit of jurisdiction in chambers is raised from 300*l.* to 1,000*l.*

7. A person who has paid or transferred money or securities into, or deposited securities in Court pursuant to the said Act of the 10 & 11 Vict. c. 96, shall be served with notice of any application made to the Court, or judge in chambers, respecting such money or securities, or the dividends thereof, by any person interested therein or entitled thereto.

A person  
bringing funds  
into Court to  
be served with  
notice.

As to this rule, see Morgan, p. 59, and cases there cited.

*Costs.*—As to the costs of unnecessary appearances on petitions, see O. LXV., r. 27 (19), *ante*, p. 492.

8. The persons interested in or entitled to such money or securities shall be served with notice of any application made by the trustee to the Court, or Judge, respecting such money or securities, or the dividends thereof.

Persons  
interested to  
be served  
with notice.

As to this rule, see Morgan, p. 59, and the cases there cited.

9. No petition relating to such money or securities as mentioned in the last four preceding orders shall be set down to be heard, and no summons relating thereto shall be sealed until the petitioner

Place of  
service to be  
named.



**Ch. Funds  
Amended  
Orders, 1874,  
rr. 9—16.**

or applicant has first named in his petition or summons a place where he may be served with any petition or summons, or notice of any proceeding or order relating to such money or securities, or the dividends thereof.

Petitions and summonses to be entitled in the matter of the 10 & 11 Vict. c. 96.

10. Petitions presented and summonses issued under the said Act of 10 & 11 Vict. c. 96, shall be entitled in the matter of the said Act, and in the matter of the particular trust.

Petitions to state whether duty is paid or not.

11. Every petition for dealing with money or securities in Court, chargeable with duty payable to the revenue under the Acts relating to legacy or succession duty, or the dividends on such securities, shall contain a statement whether such duty or any part thereof has or has not been paid.

*Duty.*—See S. C. Funds Rules, 1886, r. 66, *post*, p. 745.

Restriction on issuing certificates during vacations.

12. The registrars of the Court shall not, without a special direction of a judge, be required to issue certificates for the sale, transfer, or delivery of securities in Court during any vacation in their office.

Application at chambers.

13. Applications under the Court of Chancery (Funds) Act, 1872, for the conversion into cash of Government securities in Court of any of the three descriptions mentioned in rule 44 of the Chancery Funds Consolidated Rules, 1874, and for placing such cash on deposit, as provided by rule 71 of the said rules, or for dealing with interest on money on deposit, may be made to the Master of the Rolls and the Vice-Chancellors respectively, while sitting at Chambers.

*Placing cash on deposit.*—See S. C. Funds Rules, 1886, r. 80, *post*, p. 749.

Petitions respecting money or securities on list of undealt-with funds.

14. When a cause or matter has been inserted in the list mentioned in rule 91 of the Chancery Funds Consolidated Rules, 1874, the fact shall be stated in every petition or summons affecting any money or securities to the credit of such cause or matter. In cases in which the money or securities affected by such petition shall together amount to or exceed in value 500*l.*, a copy of such petition, and notice of all proceedings in Court or at Chambers shall (unless the Court otherwise directs) be served on the official solicitor of the Court, who shall be at liberty to appear and attend thereon.

See S. C. Funds Rules, 1886, r. 101, *post*, p. 755.

Applications under Copyhold Acts to be made at chambers.

15. Applications under the Copyhold Acts respecting any securities or money in Court, shall be made by summons at the Chambers either of the Master of the Rolls or of one of the Vice-Chancellors; but notice of any such application is not to be given to the Copyhold Commissioners, except when the Judge may so direct; and this order shall be deemed an additional article to the 35th of the Consolidated Orders, Rule 1.

*Copyhold Acts.*—See O. LV., r. 2 (11), *ante*, p. 403; Dan. Pr., pp. 2212—2215; Dan. Forms, pp. 944—946; 2 Seton, pp. 1467—1470.

Certain articles and securities not to be received by Clerks of Records and Writs.

16. The Clerks of Records and Writs shall not receive into their custody effects of the suitors consisting of jewels or plate, or other articles of a like nature, or negotiable securities.

*Clerks of Records and Writs.*—See S. C. Jud. (Officers) Act, 1879, ss. 5, 6; O. LX., r. 3; O. LXI., r. 1.

*Deposit of effects in Court.*—See S. C. Funds Rules, 1886, r. 29, *post*, p. 732; Practice Rules, *ante*, p. 708.

**Ch. Funds  
Amended  
Orders, 1874,  
rr. 16—19.**

17. No order in a cause shall be passed or entered, and no certificate in a cause of a chief clerk, or of a taxing master of the Court, shall be signed or filed, and no petition in a cause shall be answered, and no summons in a cause shall be issued, and no affidavit made in a cause shall be filed, until the same respectively be either marked with the reference to the record, as prescribed by the 1st of the Consolidated Orders, Rule 48, or be inscribed with a note indicating that the cause was commenced prior to 2nd November, 1852, and the correctness of such reference may be required to be authenticated by the official seal of the Clerks of Records and Writs being impressed on every such document.

Proceedings and documents in a cause to be marked with reference to record.

See O. LXI., r. 19, *ante*, p. 458.

18. The duplicate orders or records to be deposited with the clerks of entries pursuant to rule 18 of the Chancery Funds Consolidated Rules, 1874, shall annually (or oftener if the senior Registrar shall direct), be bound up in volumes of convenient size, and indexed, and transmitted to the Report Office, in the same manner as written orders are now bound up, indexed, and transmitted, and written office copies or extracts may be made therefrom, subject to the existing regulations relating thereto.

Duplicate orders to be deposited with clerks of entries.

See S. C. Funds Rules, 1886, r. 24, *post*, p. 731.

*Report Office.*—See S. C. Jud. (Officers) Act, 1879, ss. 5, 6, *ante*, pp. 95, 96, under which the Report Office is merged in the Central Office.

19. Solicitors shall be entitled to charge and shall be allowed the same fees on proceedings under these orders, and under the Chancery Funds Consolidated Rules, 1874, as they are, by the general orders and practice of the Court, entitled to charge and to be allowed in respect to proceedings of a similar or analogous description; and shall be entitled to charge and shall be allowed the same fees for printed copies of orders as they are now entitled to charge and to be allowed for written copies thereof.

Solicitors' fees.

*Order as to fees.*—An Order of Court of the same date as these orders provided for the fees to be paid for printed copies of orders to be acted upon by the Chancery Paymaster. The fees are now regulated by the Order as to S. C. Fees, 1884, *ante*, p. 666.

# SUPREME COURT FUNDS RULES, 1886.

[NOTE.—These rules supersede the S. C. Funds Rules, 1884, which were made in consequence of the union of the different accounting departments of the Supreme Court into one Pay Office, effected by the Act of 1883 (Funds, &c.), *ante*, p. 717. All funds of every kind in the Supreme Court are now transferred to the one accounting department, and are subject to these rules.]

Sup. Court  
Funds Rules,  
1886,  
rr. 1—3.

I, the Right Honourable Farrer, Baron Herschell, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of her Majesty's Treasury, do hereby, in pursuance of the powers contained in "The Court of Chancery Funds Act, 1872," "The Supreme Court of Judicature Act, 1875," "The Supreme Court of Judicature (Funds, &c.) Act, 1883," and of every other power enabling me in that behalf, make the following rules:—

## I. OPERATION OF RULES AND INTERPRETATION OF TERMS.

Commence-  
ment of rules  
and short  
title.

1. These rules shall come into operation on the 1st day of September, 1886, and may be cited as "The Supreme Court Funds Rules, 1886."

Repeal of  
existing rules.

2. All other rules or general orders prescribing the mode of dealing with funds in Court, and containing any provisions relating to funds in Court inconsistent with these rules, are hereby revoked and these rules substituted therefor, as from the same day:—Provided that the rules hereby revoked shall continue to apply to orders made but not fully acted upon before these rules come into operation, so far as is indispensable for the purpose of duly giving effect to such orders.

Prior to the S. C. Funds Rules, 1884, the principal rules and orders which regulated funds in Court, were, in Chancery, the Chancery Funds Consolidated Rules of 1874; in the Queen's Bench, the regulations contained in Appendix M. to the Rules of the Supreme Court, 1883; in Admiralty, the provisions of rules 19 and 20 of Order XXII. of the Rules of the Supreme Court, 1883; and in Probate matters, the Rules and Orders of the Court of Probate kept alive by Section 18 of the Judicature Act, 1873.

By the operation of the Chancery Funds Act, 1872, Section 4; of the Supreme Court Funds Act, 1883, and the saving clauses contained in rules 13 and 19, of Order XXII., of the R. S. C. 1883, the Rules of 1884 superseded all existing rules relating to funds in Court, except the Chancery Funds Amended Orders, 1874, *ante*, pp. 720—723.

Interpretation  
of terms.

3. In these rules and in orders as herein prescribed and defined terms shall have the same meaning as the same terms are defined to have in the Rules of the Supreme Court, 1883, and the following



words shall have the several meanings hereby assigned to them, viz. :—

Sup. Court  
Funds Rules,  
1886,  
r. 3.

“Paymaster” means her Majesty’s Paymaster General for the time being for and on behalf of the Supreme Court of Judicature, or the Assistant Paymaster General for Supreme Court business for the time being deputed by the Paymaster General to act on his behalf for such business :

“Pay Office” means the Paymaster General’s Office for business of the Supreme Court of Judicature :

“Pay Office Account” means the account of the Paymaster General for the time being for and on behalf of the Supreme Court of Judicature :

“Audit Office” means the Office of the Comptroller and Auditor General in which the audit of the accounts of the Pay Office is conducted :

“Bank” means the Bank of England, or the Governor and Company of the Bank of England :

“Company” includes corporation or body corporate :

“Person” includes a firm :

“Government securities” means Consolidated 3*l.* per centum Annuities, or Reduced 3*l.* per centum Annuities, or New 3*l.* per centum Annuities, or 2½*l.* per centum Annuities, or 2¼*l.* per centum Annuities :

“Funds” or “funds in Court” means any money, Government stock or annuities, or other securities, or any part thereof standing or to be placed to the Pay Office Account in the books of the Bank of England or of any other company, and includes boxes and other effects :

“Lodge in Court” means pay or transfer into Court, or deposit in Court :

“Lodgment in Court” means payment or transfer into Court, or deposit in Court :

“Title of the cause or matter” means the short title of the cause or matter, with the reference to the record :

“Ledger credit” means the title of the cause or matter and the separate account (if any) opened or to be opened under an order or otherwise, in the books of the Paymaster, to which any funds are credited or to be credited :

“Order” means an Order of the Supreme Court of Judicature or of the High Court of Justice or Court of Appeal, whether made in Court or in Chambers, and an Order in Lunacy, and includes a judgment or decree, and a report of a Master in Lunacy, confirmed by fiat, and thereby receiving the operation of an Order under the Lunacy Regulation Acts for the time being in force, or any general Order made thereunder ; and a certificate of a Master in Lunacy to be acted on without further order ; and includes the Schedule or Schedules to an Order :

“Direction” means any cheque, draft, or authority issued to the

Sup. Court  
Funds Rules,  
1886,  
rr. 3—5.

Bank of England, or to any other company, which relates to money or securities standing or to be placed to the Pay Office Account; and includes any authority for the payment of money through the agency of the Post Office :

“Court” means the Supreme Court of Judicature or the High Court of Justice or any Division thereof, or the Court of Appeal :

“Registrar” means a Registrar of the Chancery or of the Probate, Divorce and Admiralty Divisions of the High Court of Justice ; and includes the officer whose duty it may be under any General Orders in Lunacy for the time being in force to draw up and issue Orders in Lunacy.

By the Lunacy Orders, 1883, the duties of the Registrar in Lunacy are to be performed by the Masters in Lunacy.

“Chief Clerk’s certificate” or “certificate of a Chief Clerk” means a certificate made by a Chief Clerk of the Chancery Division of the Court :

“Taxing officer” means a Taxing Master in the Chancery Division of the Court, and the Master or person whose duty it is to tax the costs in the other Divisions or in Lunacy :

“National Debt Commissioners” means the Commissioners for the reduction of the National Debt :

“Statutory declaration” means a declaration under the Statutory Declarations Act, 1835 (5 & 6 Wm. 4, c. 62) subject to the provisions of 44 & 45 Vict. c. 41, s. 68 :

In causes and matters proceeding in a District Registry, Master, Chief Clerk, and Taxing Officer means District Registrar :

*Funds in District Registries.*—These rules do not apply to funds in District Registries. See rule 111, *post*, p. 757. Their only application to District Registries is where an order can be made in a District Registry respecting funds in, or to be lodged in, the Pay Office. As to funds in Court in District Registries, see O. XXXV., r. 23, *ante*, p. 284 ; and see *Wilson v. Alltree*, 27 Ch. D. 242. See now, however, as to the District Registries of Liverpool and Manchester, S. C. (District Registry) Funds Rules, 1887, *post*, p. 771.

Words importing the singular number only include the plural number, and words importing the plural number only include the singular number :

Words importing males include females.

## II. PREPARATION OF ORDERS IN THE CHANCERY DIVISION AND IN LUNACY TO BE ACTED UPON BY THE PAYMASTER, AND PARTICULARS RELATING THERETO.

4. The Rules next following, numbered severally 5 to 27 inclusive, shall apply only to causes and matters in the Chancery Division, and (so far as the same are applicable) to matters in Lunacy.

5. Every Order which directs funds to be lodged in Court, shall have annexed thereto as part thereof a Schedule, to be styled the Lodgment Schedule, which shall be headed with the title of the cause or matter, the date of the Order, and the title of the ledger

Application of  
Rules 5 to 27  
inclusive.

Order for  
funds to be  
brought into  
Court to have  
a lodgment  
schedule.

credit to which the funds are to be placed; and shall set out in a tabular form:—

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Funds Rules,  
1886,  
rr. 5, 6.

(a.) The name, or a sufficiently identifying description of the person by whom the funds are to be lodged:

(b.) The amount, if ascertained, and the description of the funds.

When an Order has directed the sale of any property and the lodgment of the proceeds thereof in Court, the authority for such lodgment may be a Lodgment Schedule signed by a Chief Clerk; and such Lodgment Schedule shall operate in the same manner as a Lodgment Schedule annexed to an Order.

The Lodgment Schedule shall be prepared upon a printed form according to the form No. 1 in the Appendix to these Rules, and as nearly as may be in the manner shown by the specimen entries appended to such Form; and may direct the investment and accumulation of the funds or the dividends or interest on the funds to be lodged; and may also direct that the funds shall not be dealt with without notice to the purchaser or other person named in such Schedule.

For the form, see *post*, pp. 758, 759.

So far as concerns the lodgment of purchase-moneys of property sold under an order of the Court, the provisions of this rule are new.

For form of Paymaster's direction for lodgment, see Appendix, Nos. 8 and 9, *post*, pp. 765, 766.

As to when money will be directed to be brought into Court, see Dan. Pr., pp. 1733 *et seq.*

As to how an order for lodgment should be applied for, see Dan. Pr., pp. 1744 *et seq.*

As to the enforcement of an order for lodgment of funds in Court, see Dan. Pr., pp. 1756 *et seq.*

6. Every Order which directs funds in Court to be paid, sold, transferred, or delivered, or carried over to any other ledger credit than that to which the same are standing, or to be otherwise dealt with by the Paymaster, shall have annexed thereto as part thereof a Schedule, to be styled the Payment Schedule, which shall be headed with the title of the cause or matter, the date of the Order, and the ledger credit to which the funds dealt with are standing. The Payment Schedule shall contain as part of the heading a statement of the funds with which, or with part of which, or with the interest or dividends on which the Paymaster is to deal, describing them if already in Court as they appear in the Paymaster's certificate, or if not already in Court stating the source from which they are to be derived. The Payment Schedule shall set out in a tabular form:—

Order for  
funds to be  
paid out, &c.  
to have a  
payment  
schedule.

(a.) The name of each person to whom a payment, transfer, or delivery of any funds is to be made: unless the name is to be stated in a certificate of a Chief Clerk or a Master in Lunacy or a Taxing Officer, or unless such payment, transfer, or delivery is to be made to trustees or other persons in succession, or to representatives when no probate or letters of administration shall have been taken out at the date of the Order. The name shall be in full (the Christian name preceding the surname) except in the case of a payment to a firm, when the business title of such firm may be stated; and when a payment is to be made to a person named in the Schedule, the address (if known at the time of preparing the



Sup. Court  
Funds Rules,  
1886,  
rr. 6—10.

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Schedule) of such person, or in the case of a payment to two or more persons jointly of one of such persons, shall be stated in the Schedule:

- (b.) The title of the ledger credit or separate account to which any funds are to be carried over:
- (c.) The amount and description of the funds in each case to be paid, sold, transferred, delivered, or carried over, so far as the same can be then stated; and where the actual amounts to be dealt with cannot be ascertained at the date of the Order, and are not to be subsequently ascertained by any means provided for by the Order or by these Rules, the aliquot parts to be dealt with:
- (d.) The nature and necessary particulars of any other dealings with such funds by the Paymaster.

In the body of the Schedule short descriptions may be used, and it shall not be necessary to add that the specific amounts dealt with form part of the larger amount of any like funds mentioned in the heading. The word "interest" in the Schedule shall, unless otherwise specified, mean the dividends and interest on all the funds mentioned in the heading.

The Payment Schedule shall be prepared upon a printed form according to the Form No. 2 in the Appendix to these Rules, and as nearly as may be in the manner shown by the specimen entries appended to such form.

For the meaning of *ledger credit* and *funds*, see r. 3, *supra*.

For forms of Payment Schedules, see Appendix No. 2, *post*, p. 760.

When a separate account is opened.

7. When funds in Court are by an Order directed to be carried over to a separate account, the title of the ledger credit to be opened for the purpose shall, unless the Order otherwise directs, commence with the title of the cause or matter to which such funds are standing.

When both a lodgment and payment schedule to be annexed.

8. Every Order which both directs or authorises the lodgment of funds in Court, and also deals with such funds or any part thereof, or with any funds already in Court to the same ledger credit, shall have annexed thereto as part thereof a combined Lodgment and Payment Schedule, in the Form No. 3 in the Appendix to these Rules.

For form of combined Lodgment and Payment Schedule, see Appendix No. 3, *post*, p. 762.

Separate schedule for each ledger credit.

9. When funds to be lodged in Court under an Order are by the same Order directed to be placed to two or more ledger credits, separate Lodgment Schedules shall be made out for such respective ledger credits; and when funds standing to two or more ledger credits are dealt with by the same Order, separate Payment Schedules shall be made out for such ledger credits respectively.

Instructions to paymaster to be solely contained in schedule.

10. The Lodgment and Payment Schedules, respectively, shall contain the whole of the instructions intended by the Orders of which they severally form part to be acted upon by the Paymaster, and all particulars necessary to be known by him, so far as such instructions and particulars are capable of being expressed at the date of the Order, and the Paymaster shall only be responsible for

giving effect to such instructions so intended to be given by the Order as are expressed in the Lodgment or Payment Schedule thereto. The instructions and particulars contained in a Lodgment or Payment Schedule shall not be set forth in the body of the Order, but shall only be therein referred to as appearing by the Schedule, unless for any special cause it shall, in the opinion of the Judge by whom the Order is made, or the Registrar by whom the same is drawn up, be necessary to set forth some part of such instructions or particulars both in the body of the Order and in the Schedule.

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Funds Rules,  
1886,  
rr. 10—15.**

11. When an Order directs any sums to be ascertained by the certificate of a Chief Clerk or Taxing Officer, or a Master in Lunacy, or in any other manner, and to be afterwards dealt with by the Paymaster, it shall be so expressed in the Payment Schedule; and such certificate or other authority, or a duplicate or an office copy of the same, or of so much thereof as shall be necessary, shall be sent to the Paymaster. Such certificate shall be printed, or partly printed, and as nearly as may be in the Form No. 4 appended to these Rules.

When sums are to be ascertained by certificate, &c.

12. When an Order directs payment out of a fund in Court of any costs directed to be taxed by a Taxing Officer, the Taxing Officer shall state in his certificate the name and address of the person to whom such costs are payable. Such certificate shall be printed, or partly printed, and as nearly as may be in the Form No. 5 appended to these Rules, and a duplicate or an office copy thereof shall be sent to the Paymaster.

Certificate for payment of taxed costs.

*Taxing Officer's certificate.*—Order LXV., r. 27 (35), of the R. S. C. 1883, provides that where costs are to be paid out of a fund in Court, the Taxing Officer is in his certificate of taxation to state the total amount of all such costs so taxed, and the present rule taken in conjunction with that immediately preceding, provides for the payment to the solicitor of the amount so certified upon the production of the certificate. See as to the practice, Dan. Pr., p. 1266.

13. When interest not directed to be certified is payable in respect of any money in Court directed by an Order to be dealt with by the Paymaster, there shall be stated in the Payment Schedule the rate per centum at which, and (if the day to which interest is payable can be fixed by the Order) the day (inclusive) to which such interest is to be computed, and the amount of such interest.

Interest how ascertained.

14. If the day to which interest is payable cannot be fixed by the Order, the day from which (exclusive) such interest is to be computed shall (except in the case of a computation of subsequent interest in the certificate of a Chief Clerk, or a Master in Lunacy) be stated in the Payment Schedule, and such interest may be directed to be computed and certified by a Chief Clerk, or a Master in Lunacy, or (where the computation is dependent upon the taxation of costs) by a Taxing Officer.

When the day to which interest is payable cannot be ascertained.

15. Interest certified by a Chief Clerk, or a Master in Lunacy, or a Taxing Officer, may, unless the Order otherwise directs, be computed to a day subsequent to the date of the certificate and to be named therein as the day for payment, so as to allow a reasonable time for doing all necessary acts to enable the payment to be made;

When interest certified by a chief clerk, &c.



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Funds Rules,  
1886,  
rr. 15—20.

and the Chief Clerk, or Master in Lunacy, or Taxing Officer, may, if he thinks fit, require a statement in writing of such computation, authenticated by the signature of the solicitor of the person having the carriage of the Order, to be produced before preparing the certificate, but no affidavit verifying such computation shall be required.

When interest  
to be ascer-  
tained by  
affidavit.

16. When the day for payment is not fixed by the Order, and the interest is not directed to be certified as in the last preceding Rule mentioned, such interest shall, without any provision in the Order for that purpose, be ascertained by an affidavit, or by a statutory declaration, in which case such interest shall be computed to a day (inclusive) to be named in such affidavit or declaration, as the day for payment; which day shall not be more than fourteen days after the day of swearing such affidavit, or making such declaration; and such affidavit or declaration shall be a sufficient authority to the Paymaster to pay or apply the amount of interest so ascertained in the manner directed by such Order.

Deduction of  
income tax  
from interest.

17. In every case in which interest is to be computed, income tax (if any) shall, in making such computation, be deducted therefrom at the rate payable during the time such interest accrues, unless the Order otherwise directs; and if income tax has been deducted, it shall be so stated in every such affidavit or declaration as is mentioned in the last preceding Rule.

When dealings  
by the pay-  
master are  
made contin-  
gent upon the  
execution of  
particular  
documents.

18. Whenever the dealing by the Paymaster with funds in Court is, by an Order, made contingent upon the execution of some document, it shall be so expressed in the Payment Schedule. The execution of such document shall be certified by a Master in Lunacy, or by a Chief Clerk, unless the Order directs that it be verified by affidavit, and such certificate or affidavit shall state the particular amount of funds to be dealt with. Such certificate shall be printed, or partly printed, and as nearly as may be in the Form No. 6 appended to these Rules.

Periodical  
payments.

19. When an Order directs the payment of dividends, annuities, or other periodical payments, to be made by the Paymaster, there shall be stated in the Payment Schedule (except in the case of dividends payable as they accrue due), the time when the first of such payments and all subsequent periodical payments, whether quarterly, half-yearly, yearly, or otherwise, are to be made.

Legacy and  
succession  
duty.

20. When an Order directs the payment, transfer, or delivery of funds in Court, in respect of which duty shall be payable to the revenue under the Acts relating to legacy or succession duty, and does not direct the payment of such duty, it shall be stated in the Payment Schedule that such payment, transfer, or delivery is subject to duty, and in such case the Paymaster is to have regard to the circumstance that such duty is payable; and when by an Order funds in respect of which such duty may be chargeable are directed to be invested, carried over, or placed to a separate account, the words "subject to duty" shall be added in the Schedule to the separate account directed to be opened.



**21.** When a person to whom payment, transfer, or delivery of funds in Court is directed is entitled thereto as real estate, or as trustee, executor, or administrator, or otherwise than in his own right or for his own use, the fact that he is entitled to the same as real estate, or the character in which he is so entitled, shall be stated in the Payment Schedule to the Order, or in the certificate of a Chief Clerk, or of a Taxing Officer, or of a Master in Lunacy.

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Funds Rules,  
1886,  
rr. 21—24.

Payment,  
transfer, or  
delivery to  
trustees, &c.

**22.** When an Order is made dealing in any way with funds in Court or to be brought into Court in accordance with minutes agreed upon by the parties, the solicitor of the party whose duty it is to procure the Order to be drawn up and entered shall prepare and lodge with the Registrar or other proper officer, for his consideration, draft Lodgment and Payment Schedules, as the case may be, in the same form as the Lodgment and Payment Schedules to an Order, and containing the particulars, so far as the same have been ascertained, which are required by these Rules to be contained in the Lodgment and Payment Schedules of the Order.

Draft Sched-  
ule to be  
prepared by  
party having  
conduct of  
proceedings.

*Settling Orders.*—As to the practice before the Registrars on settling orders, see O. LXII., *ante*, pp. 461—464.

The draft Schedule will have to be left with the Registrar, with the other documents necessary for the preparation of the Order.

By rules 5 and 6, *supra*, the Schedules will be prepared on printed forms.

*Lunacy.*—In Lunacy matters, Registrar means the officer whose duty it is to draw Orders in Lunacy; and by the Lunacy Rules, 1883, the office of Registrar in Lunacy is to be performed by one of the Masters in Lunacy.

**23.** Every Order which is to be acted upon by the Paymaster shall be drawn up and entered by the Registrar, unless the Judge otherwise directs, and shall either be wholly printed, or, in cases in which printed forms can be used, may be partly in print and partly in writing.

Orders how  
drawn up and  
entered.

**24.** The Registrar shall cause a duplicate of every printed or partly printed Order and a further copy of the Schedules thereto to be made at the same time with the original; and the original Order shall be passed by the Registrar in the usual way, and together with the further copy of the Schedules thereto be stamped with his official seal on every leaf thereof, and transmitted by him to the Clerks of Entries with the duplicate. The duplicate Order shall be retained and filed by the clerks of entries as the record, and the original order and further copy of the Schedules shall be examined and stamped by them and marked with a reference thereon to the duplicate or record so filed. The original Order and further copy of the Schedules shall be returned to the Registrar, who shall deliver the original Order to the solicitor having the carriage of the Order, and shall send the further copy of the Schedules to the Paymaster.

Authentica-  
tion and record  
of Orders, and  
copy of  
schedules for  
paymaster.

A copy of a Lodgment Schedule signed by a Chief Clerk (under Rule 5 of these Rules) shall be sent to the Paymaster by the Chief Clerk.

The provision that the Lodgment and Payment Schedules shall be transmitted by the Registrar is new. See Registrars' Regulations, *post*, p. 780.

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Funds Rules,  
1886,  
rr. 25—29.

Paymaster to  
act on copy of  
schedules.

Additional  
copies of  
printed  
Orders.

Amendment  
of accidental  
errors in  
printed  
Orders.

**25.** The copy of the Schedules to an Order sent to the Paymaster pursuant to the last preceding rule shall be the Paymaster's authority for giving effect to the several operations directed therein. No part of the Order other than the Schedules thereto shall be sent to the Paymaster.

**26.** Additional printed copies of Orders or Schedules may be made according to the requirements of the parties or their solicitors, and when such Orders have been passed and entered, such additional copies shall be transmitted to the Central Office, and upon being duly completed and signed or certified by the proper officer, may be issued as office or certified copies.

**27.** Clerical mistakes or errors, or accidental omissions in printed Orders, may be amended in writing; and every such amendment shall be stamped by the clerks of entries or other proper officer, with the official seal, as evidence that the duplicate or record has been also amended: Provided that no amendment shall be made in any Order to provide for a new state of circumstances arising after the date of the Order; nor shall any Order be amended for the purpose of extending the time thereby limited for making any lodgment of funds in Court.

When any such amendment is made in a Schedule to an Order, the copy of such Schedule to be sent to the Pay Office under Rule 24 (if not already so sent) shall be amended and stamped in the manner above provided. If such copy has prior to the amendment been sent to the Pay Office, a notification of the amendment, signed by a Registrar, shall be delivered to the solicitor having the carriage of the Order, who shall leave such notification at the Pay Office, and produce therewith the amended original Order; and the Paymaster shall note such amendment on his copy of the Schedule and act in accordance therewith.

### III.—FORM OF ORDERS FOR THE PAYMENT OF MONEY IN THE QUEEN'S BENCH AND PROBATE DIVORCE AND ADMIRALTY DIVISIONS.

Form of  
Orders in  
Queen's Bench  
and Probate  
Divorce and  
Admiralty  
Divisions.

**28.** In the Queen's Bench and Probate Divorce and Admiralty Divisions an Order for the payment of money to be acted upon by the Paymaster shall be in the Form No. 7 in the Appendix to these Rules, or as nearly as may be, and shall be signed by a Master or a Registrar, as the case may be.

In the Appendix to the R. S. C., 1883 (Appendix K, No. 2), a general form of order is given, but no special form of order is prescribed for payment of money out of Court.

For the form mentioned in the rule, see *post*, p. 764.

### IV. LODGMENT OF FUNDS IN COURT.

All funds  
lodged in  
Court to be  
placed to the  
account of the  
paymaster.

**29.** All funds to be paid into or deposited in Court shall be paid or deposited at the Bank of England (Law Courts Branch) and placed in the books of the Bank to the account of the Paymaster General for the time being for and on behalf of the Supreme Court of Judicature; and the Bank shall cause a receipt to be given to the person making the payment or deposit.

All securities to be transferred into Court shall be transferred to



the said account in the books of the Bank or other company in whose books such securities are registered.

Any effects brought to the Bank to be so deposited in Court shall be deposited in locked boxes, or in such other secure manner as shall satisfy the Bank; and before taking custody of a box the agent, or other officer acting on behalf of the Bank, may at his discretion require an inspection of its contents in presence of the person depositing it.

The last paragraph of this rule is new.

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Funds Rules,  
1886,  
rr. 29, 30.

**30.** In the Chancery Division a direction for a lodgment directed by an Order, or in a Lodgment Schedule signed by a Chief Clerk (in the case of purchase moneys), shall be issued by the Paymaster upon receipt of a copy of the Lodgment Schedule; and a direction for a lodgment under the Trustee Relief Act shall be issued by him upon receipt of an office copy of the Schedule mentioned in Rule 41.

A lodgment of funds in Court not directed by an Order may be made upon a direction to the Bank or other Company, to be issued by the Paymaster on a request signed by or on behalf of the person desiring to make such lodgment: Provided that no such lodgment shall be placed in the Pay Office books to a separate account in a cause or matter (except to a security for costs account) unless an Order has directed such separate account to be opened.

The request for a direction under this Rule shall state the name of the person by or on whose behalf the funds are to be lodged, the ledger credit in the Pay Office books to which the funds are to be placed, and the date of the authority or certificate (if any) in pursuance of which the funds are to be lodged.

In cases of funds to be lodged in pursuance of the Lands Clauses Consolidation Act, 1845, or of the Copyholds Acts, the further particulars required under Rules 39 and 40 shall be stated in the request. And when (otherwise than as hereinbefore provided) funds are lodged in Court in pursuance of an Act of Parliament, under which some specific authority is necessary for such lodgment, the request for a direction for lodgment shall contain a reference to such Act and authority, and the requisite authority shall be left at the Pay Office.

Except in the cases next mentioned, the requests under this Rule shall be in the Forms No. 8 (for money) and No. 9 (for securities), in the Appendix to these Rules.

When money is to be lodged under the provisions of Order XXII. of the Rules of the Supreme Court, 1883 (in any action brought to recover a debt or damages) or under the provisions of Rule 26 of Order XXXI. of the said Rules, the request shall be in the Form No. 10 in the Appendix to these Rules, and shall contain a statement of the circumstances under which the money is to be lodged, in such of the following terms as may be applicable to the case, viz.:—

(A.) When the money is to be lodged subject to the provisions of Rule 5 of Order XXII., a statement in the following terms:—  
“Paid in on behalf of defendant in satisfaction of claim of above-named [*name of party*],” (or “with defence setting up tender”).

Manner of  
lodgment of  
funds in Chan-  
cery Division;  
and particu-  
lars to be  
stated in  
request.

Lodgments  
under Orders  
XXII. and  
XXXI. of  
R. S. C. 1883.



Sup. Court  
Funds Rules,  
1886,  
rr. 30, 31.

- (B.) When the money is to be lodged subject to the provisions of Rule 6 of Order XXII., a statement in the following terms:—  
“Paid in on behalf of defendant against claim of above-named [name of party], with defence denying liability.”
- (C.) When the money is to be lodged under the provisions of Rule 26 of Order XXXI., a statement in the following terms:—  
“Paid in to security for costs account on behalf of [name of party].”

*Effect of Rule.*—This rule applies to the Chancery Division only. It contemplates three classes of cases, namely—

- (1.) Lodgment in pursuance of an Order or Lodgment Schedule signed by a Chief Clerk.
- (2.) Lodgment without an Order.
- (3.) Lodgment under some special Act of Parliament or authority.

(1.) As to the practice in the first of these cases, see r. 24, *supra*. The party to make the lodgment will receive at the Pay Office the Paymaster's direction to the bank to receive the money, which direction he will take to the bank. For form of directions, see Appendix No. 8, II., *post*, p. 765.

(2.) In the second of these cases, comprising, for instance, payment into Court in satisfaction of a claim in an action, or to a security for costs account, the party making the lodgment will have to bring to the Pay Office a request in one of the forms in Appendix Nos. 8, 9, and 10, *post*, pp. 765, 766. The request will require a shilling stamp. It will have to be filled up with the necessary particulars, *e.g.*, the title of the cause or matter, and ledger credit, the signature of the person making the lodgment, &c.

Upon handing in the request, the party will receive a direction to the bank to receive the money as above mentioned. See forms, *post*, pp. 765, 766.

(3.) When the lodgment is under some specific authority, the authority must be produced at the Pay Office when the request is left there, and the request must contain a reference to the authority.

*Funds lodged under statutory provisions.*—In the case of funds lodged under the Parliamentary Deposits Act (9 & 10 Vict. c. 20, s. 2), the “specific authority” which must be left at the Pay Office is a warrant from one of the clerks in the office of the Clerks of Parliament, or of the Private Bill Office. In the case of funds lodged under the Legacy Duty Act (36 Geo. III. c. 52), the specific authority is a certificate, issued under the authority of the Act, from the Legacy Duty Office of the payment of the duty. If lodged under the Tramways Act, 1870 (33 & 34 Vict. c. 78), or the Life Assurance Acts, 1870, 1871, or 1872 (33 & 34 Vict. c. 61; 34 & 35 Vict. c. 58; 35 & 36 Vict. c. 41), the authority is a warrant from the Board of Trade.

*Money lodged in satisfaction, &c.*—When money is lodged in satisfaction of a claim in an action, or to a security for costs account, the request must be filled up with a statement specifying how and for what purpose the money is paid in, *e.g.*, whether it is in satisfaction of the claim, or with a defence denying liability. This is necessary for the purpose of giving effect to the provisions of O. XXII., by which, in certain cases, parties are entitled to have money which has been paid in in satisfaction of their claims paid out without an Order.

Conditional  
lodgment of  
money at the  
bank in  
urgent cases.

**31.** When it is desired to bring money into Court in the Chancery Division, whether under an Order or otherwise, without waiting the time necessary to obtain a direction for the Bank to receive such money, it may be lodged at the Bank to the credit of a Supreme Court Suspense Account (subject to being dealt with as hereinafter mentioned, and not otherwise), upon an application signed by the person desiring to lodge the same, or his solicitor, and addressed to the Bank, specifying the amount, and the title of the ledger credit to which it is desired to be lodged, and upon such lodgment being made one of the cashiers of the Bank shall give a certificate that the amount has been lodged to the credit of the said

Suspense Account; and in every case the person making such lodgment, or his solicitor, shall forthwith request the direction of the Paymaster for the Bank to receive the money in the manner provided by the last preceding Rule, and shall leave such direction at the Bank for the purpose of having the money so previously lodged transferred to the Pay Office Account, and placed in the books of the Pay Office to the ledger credit mentioned in such direction.

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Funds Rules,  
1886,  
rr. 31—33.

**32.** In the Queen's Bench Division a lodgment of money to the account of the Paymaster shall be made on presentation at the Bank (Law Courts Branch) of a request signed by or on behalf of the person desiring to make such lodgment. Such request for lodgment shall be in the Form No. 11 in the Appendix to these Rules, or as nearly as may be, and shall specify the title of the cause or matter to the credit of which the lodgment is to be placed, and shall also contain a statement of the circumstances under which the money is lodged, in such of the following terms as may be applicable to the case, viz.:—

Manner of  
lodgment of  
funds in the  
Queen's Bench  
Division.

(A.) When the money is to be lodged subject to Rule 5 of Order XXII. of the Rules of the Supreme Court, 1883, a statement in the following terms:—"Paid in on behalf of defendant in satisfaction of claim of above-named" [*name of party*], (or "with defence setting up tender").

(B.) When the money is to be lodged subject to Rule 6 of Order XXII. of the Rules of the Supreme Court, 1883, a statement in the following terms:—"Paid in on behalf of defendant against claim of above-named" [*name of party*] "with defence denying liability."

(C.) When the money is to be lodged under Rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883, a statement in the following terms:—"Paid in to security for costs account on behalf of [*name of party*]."

(D.) When the money is to be lodged in pursuance of an Order, or otherwise than as above specified, a statement of the nature and date of the authority under which the lodgment is made, as for instance:—"Paid in under Order dated the       day of       18   :" or "Paid in on notice of appeal [in Bankruptcy], dated the       day of       18   ."

If the lodgment is made upon a notice or pleading, such notice or pleading must be produced at the Bank, and the receipt for the lodgment shall be given thereon; and if the lodgment is made in pursuance of an Order, such Order, or an office copy thereof, must be produced at the Bank by the person making the lodgment.

A lodgment of funds other than money shall be made upon a direction to be issued by the Paymaster upon receipt of a copy of the Order directing such lodgment.

The last paragraph of this rule is new.

**33.** In every case of a lodgment in the Chancery and Queen's Bench Divisions under the provisions of the said Orders XXII. and XXXI., as provided in the preceding Rules 30 and 32, the Paymaster shall cause an entry to be made in his books indicating the circumstances under which the money is stated to be lodged.

Lodgments  
under Orders  
XXII. and  
XXXI. to be  
distinguished  
in Pay Office  
books.



**Sup. Court  
Funds Rules,  
1886,  
rr. 34—38.**

Manner of  
lodgment of  
funds in Pro-  
bate Divorce  
and Admiralty  
Division; such  
lodgments to  
be notified to  
registrar.

**34.** In the Probate Divorce and Admiralty Division a lodgment of funds to the account of the Paymaster shall be made upon presentation at the Bank (Law Courts Branch) of an authority signed by or on behalf of a Registrar. Such authority shall be issued upon a request signed by or on behalf of the person desiring to make such lodgment. The request shall specify the title of the cause or matter (which in Admiralty actions shall include the name of the ship), and any particulars of the lodgment which may be necessary, and shall be in the Form No. 12 in the Appendix to these Rules.

When the receipt of funds authorised to be lodged as above has been certified to the Paymaster by the Bank, the Paymaster shall cause a notification of the lodgment to be sent to the Registrar by whom or on whose behalf such lodgment was authorised.

For form, see *post*, p. 768.

Requests and  
directions may  
be sent by  
post.

**35.** A request or authority for the issue by the Paymaster of a direction for the lodgment of funds in Court may be sent to the Paymaster by post, and, if so desired by the person sending the same, the Paymaster shall send such direction by post to the address specified by such person.

Persons may  
bring funds  
into Court in  
Chancery  
Division  
though time  
limited by  
Order has  
expired.

**36.** A person directed by an Order in the Chancery Division to make a lodgment in Court shall be at liberty to make the same without further Order, notwithstanding the Order may not have been served, or the time thereby limited for making such lodgment may have expired; and if any further sum of money has by reason of such default become payable by such person for interest, or in respect of dividends, he shall be at liberty to lodge in Court such further sum upon a request as hereinbefore provided: Provided that any such subsequent lodgment shall not affect or prejudice any liability, process, or other consequences which such person may have become subject to by reason of his default in making the same within the time so limited.

Upon receipt  
or transfer of  
funds, direc-  
tion to be  
returned to  
paymaster.

**37.** When funds have been received by the Bank and when securities have been transferred in the books of the Bank or any other Company to the Pay Office Account in accordance with a direction, the Bank or other Company shall forthwith send such direction to the Paymaster, with a certificate thereon that the funds specified have been received or transferred as therein authorised, and (in the case of such other Company) shall therewith send the stock or share certificate (if any) of the securities so transferred.

See form of certificate by the Bank, *post*, p. 765; by a Company, *post*, p. 766.

Certificate of  
lodgment in  
Chancery  
Division to be  
filed.

**38.** In the Chancery Division, when any direction or other authority for the lodgment of funds in Court is returned to the Pay Office, with a certificate thereon that the funds therein mentioned have been lodged, the Paymaster shall file at the Central Office a certificate of such lodgment, and shall therein state the ledger credit to which such funds have been placed in the books at the Pay Office; and an office copy of such certificate of the Paymaster shall be received as evidence of the lodgment.

Compare Order XXXVII., r. 4, *ante*, p. 309, as to office copies of other documents being evidence.



**39.** Money lodged in Court in the Chancery Division pursuant to the 69th section of the Lands Clauses Consolidation Act, 1845, in respect of lands in England or Wales, shall be placed in the books at the Pay Office to the credit of *Ex parte* the promoters of the undertaking, in the matter of the special Act (citing it), and some words shall be added in each case briefly expressive of the nature of the disability to sell and convey, by reason of which the money shall be so paid in, which particulars shall be stated in the request for the direction for the lodgment.

**Sup. Court  
Funds Rules,  
1886,  
rr. 39—42.**

When money is lodged under Act 8 Vict. c. 18, s. 69, disability to be stated.

See *Dan. Pr.*, p. 2138.

Where under this rule funds are lodged in Court to a credit which sufficiently expresses the interests of the parties, it is not necessary, upon an application for investment, to carry over the fund to a new credit.

**40.** Money lodged in Court in the Chancery Division pursuant to the Copyhold Acts shall be placed in the books at the Pay Office to the credit of "*Ex parte* the Land Commissioners for England," and of the particular manor in respect of which the money shall be so paid in; and in the request for a direction for the lodgment the name and locality of such particular manor shall be stated.

Money lodged under the Copyhold Acts to be specially described.

The title of the Copyhold Commissioners has been changed to Land Commissioners.

**41.** When a trustee or other person desires to lodge funds in Court in the Chancery Division under the Act 10 & 11 Vict. c. 96, he shall annex to the affidavit to be filed by him pursuant to the said Act a Schedule in the same printed form as the Lodgment Schedule to an Order, setting forth:—

Lodgments under the Trustee Relief Act.

- (a.) His own name and address;
- (b.) The amount and description of the funds proposed to be lodged in Court;
- (c.) The ledger credit in the matter of the particular trust to which the funds are to be placed;
- (d.) A statement whether legacy or succession duty (if chargeable) or any part thereof has or has not been paid;
- (e.) A statement whether the money or the dividends on the securities so to be lodged in Court, and all accumulations of dividends thereon, are desired to be invested in any and what description of Government securities, or whether it is deemed unnecessary so to invest the same.

An office copy of such Schedule is to be left with the Paymaster.

*Trustee Relief Act.*—As to payment into Court under the Trustee Relief Act, see *Dan. Pr.*, pp. 1749, 2065 *et seq.*; Morgan, pp. 57—60. As to notice of payment into Court, see *Re Stenting*, 50 L. T. 586.

**42.** Any principal money or dividends received by the Bank in respect of securities standing to the Pay Office Account shall be placed in the books at the Pay Office, in the case of principal money to the credit to which the securities whereon such money arose were standing at the time of the receipt thereof, and in the case of dividends to the credit to which the securities whereon such dividends accrued were standing at the time of the closing of the transfer books of such securities previously to the dividends becoming due.

Credit to which proceeds of securities and dividends are to be placed.

Sup. Court  
Funds Rules,  
1886,  
rr. 43, 44.

Appropriation  
of money  
lodged under  
Order XIV. of  
R. S. C. 1883.

# V. APPROPRIATION IN THE QUEEN'S BENCH DIVISION OF MONEY LODGED UNDER ORDER XIV.

**43.** In the Queen's Bench Division, when a defendant has lodged money in Court under Order XIV. of the Rules of the Supreme Court, 1883, as a condition of liberty to defend, and desires to appropriate the whole or any part of such money to the whole or any specified portion of the plaintiff's claim pursuant to Rule 11 of Order XXII. of the said Rules, he or his solicitor shall leave at the Pay Office a notice of such appropriation in the Form No. 13 in the Appendix to these Rules, specifying the title of the cause or matter to the credit of which the money is standing, the date of the Order under which the money was lodged in Court, and the amount to be appropriated; and whether so appropriated, (A) in satisfaction of a claim, or (B) against a claim, with a defence denying liability; and thereupon, for the purposes of payment out of Court, the money mentioned in the notice shall be subject to the next following Rule. The person leaving such notice must produce therewith the original receipt of the Bank for the amount lodged.

This rule applies to Queen's Bench actions only, and to particular cases provided for in O. XXII., r. 11, *ante*, p. 226.

For form, see *post*, p. 768.

# VI. PAYMENT, DELIVERY, AND TRANSFER OF FUNDS OUT OF COURT, AND OTHER DEALINGS WITH FUNDS.

Payment out  
of Court of  
money lodged  
under Orders  
XXII. and  
XXXI. of  
R. S. C. 1883.

**44.** In the Chancery and Queen's Bench Divisions, when money has been lodged under Orders XXII. and XXXI. of the Rules of the Supreme Court, 1883, (as described in Rules 30 and 32 of these Rules,) and when and so far as money lodged under Order XIV. of the said Rules of the Supreme Court has been appropriated in the manner provided in the last preceding Rule, payment of the money shall be made to the person in satisfaction of whose claim it has been lodged, or to the person otherwise entitled thereto, or, on the written authority of either such person respectively, to his solicitor, as under:—unless an Order restraining such payment has been lodged at the Pay Office prior to the issue of the Paymaster's direction for payment.

(A.) When the money has been lodged or appropriated in satisfaction of a claim (or with defence setting up tender), under Rules 30 (A.) and 32 (A.) of these Rules, or the last preceding Rule, a direction for payment shall be issued by the Paymaster upon a request or authority in the Form No. 14 (A.) in the Appendix to these Rules, or as nearly as may be.

(B.) When the money has been lodged or appropriated against a claim, with a defence denying liability, under Rules 30 (B.) and 32 (B.) of these Rules, or the last preceding Rule, a direction for payment shall be issued by the Paymaster upon receipt of a notification that the plaintiff accepts the sum lodged in satisfaction, and that due notice has been given of such acceptance, and upon a request or authority for payment of the same; such notification and request or authority to be in the Form No. 14 (B.) in the Appendix to these Rules, or as nearly as may be.



(C.) When the money has been lodged to a Security for Costs Account under Rules 30 (C.) and 32 (C.) of these Rules, a direction for payment shall be issued by the Paymaster, upon receipt of a certificate of a Taxing Officer, Master, or Chief Clerk (as the case may be) as to the person who is entitled to have paid out to him the money so lodged; such certificate to be printed, or partly printed, and as nearly as may be in the Form No. 14 (C.) appended to these Rules.

Sup. Court  
Funds Rules,  
1886,  
rr. 44-47.

When a request is made for payment of money lodged in the Chancery and Queen's Bench Divisions on a notice or pleading, the original receipted notice or pleading must, whenever so required, be produced at the Pay Office.

In the Probate Divorce and Admiralty Division when money has been lodged to a security for costs account, under the provisions of Rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883, a direction for payment shall be issued by the Paymaster upon receipt of a certificate or other authority of a Registrar as to the person entitled to payment of the money so lodged.

Except as in this Rule is provided, the money so lodged or appropriated as mentioned herein, shall only be paid out in pursuance of an Order.

Paragraph C. was inserted by a special rule made on the 14th of August, 1884.

Under the Chancery Funds Rules, 1874, it was impossible for a party, even when entitled to it, to obtain money out of Court without an Order. In the Queen's Bench, payment of money out of Court without an Order was common practice.

Under the present rule, the party entitled to the money in either Division will take with him to the Pay Office a request for payment (stamp 1s.) filled up as shown in the Appendix, Nos. 14 (A), 14 (B), and 14 (C), *post*, pp. 769, 770. The Paymaster will then issue to the party a direction for payment, which will be either a cheque or some other form of negotiable money order. See rule 49, *infra*, as to directions for payment, and also rule 107, *infra*.

As to remittance of payments by post, see rule 48, *infra*.

45. Except as provided in the last preceding Rule, and subject to the provisions contained in Rules 55, 56, 57, 70, 73, 74, and 109, funds in Court shall not be paid, delivered, or transferred out of Court, nor invested, sold, or carried over, unless in pursuance of an Order, or in the case of an investment of money or application of dividends unless in pursuance of an authority contained in a certificate of a Master in Lunacy.

In other cases funds to be dealt with only in pursuance of an Order.

This rule is founded on rule 36 of the Chancery Funds Rules, 1874, but is made of general application to all Divisions.

46. A duly authenticated copy of every Order in the Queen's Bench and Probate Divorce and Admiralty Divisions which directs funds to be dealt with, shall be left at the Pay Office, by or on behalf of the person entitled to payment or interested in any other dealings with such funds directed or authorized by the Order, and shall be the Paymaster's authority for the issue of directions giving effect to such Orders.

A copy of every Order dealing with funds in the Q. B. and P. D. and A. Divisions to be left at the Pay Office.

47. The directions of the Paymaster for the payment of money under these Rules, and for the delivery of securities out of Court in pursuance of an Order shall be prepared by the Paymaster

Paymaster to prepare directions giving effect to



**Sup. Court  
Funds Rules,  
1886,  
rr. 47, 48.**

Orders upon  
receipt of the  
necessary  
authority and  
information.

forthwith, or from time to time, upon receipt of a copy of the Order and any further necessary authority or information; and except as provided in the next following Rule such directions shall be delivered upon the personal application of the persons entitled thereto.

Investments of money, transfers of securities out of Court, and carrying over of funds, in pursuance of an Order, shall be made by the Paymaster upon receipt of the necessary authority and information.

Sales of securities in pursuance of an Order of which a copy has been received in the Pay Office, shall be made by the Paymaster upon application by or on behalf of the persons interested therein, and such application may be sent by post.

See rules 10, 24, 46, *supra*.

Applications, either for payment of money or sale of securities, may be made by post. See next rule.

Payments may  
be made by  
post.

**48.** Subject to the conditions as to limitation of amount and otherwise in this Rule mentioned, and to any variation of such conditions which the Treasury may from time to time direct, persons entitled to payment of money may receive from the Paymaster, by post, a direction or other document by which payment may be obtained:—

- (a.) When money, not exceeding a sum of 1,000*l*. (other than a periodical payment hereunder in this Rule mentioned), is payable to a person having an account at a bank in the United Kingdom, whose name and address are stated in the Order or other authority under which the money is payable, or in a certificate of a Chief Clerk, or of a Taxing officer, or of a Master in Lunacy, to be acted upon by the Paymaster, or whose address, in the case of a payment under an Order in the Chancery Division, is certified to the Paymaster by a solicitor having carriage of the Order which authorizes the payment, the Paymaster shall remit the same by post to such person to the address so stated, upon receipt of a request to that effect in the prescribed form, in which is specified the name of the bank at which the money is to be placed to the account of such person. The Paymaster's direction for payment will be payable to the order of such person; it will be specially crossed to his account at the named bank and will not be negotiable.
- (b.) When money, not exceeding a sum of 500*l*. (other than a periodical payment hereunder in this Rule mentioned), is payable to a person residing within the United Kingdom, who has not an account at a bank, or whose address is not ascertained by the Paymaster in the manner above prescribed, the Paymaster shall remit the same by post to such person upon receipt of a request to that effect in the prescribed form, signed by such person and attested by a justice of the peace, or a commissioner to administer oaths, or a clerk in holy orders, or a notary public. The Paymaster's direction for payment will be sent to the address stated in the request, and will be crossed so as to be payable only through a banker.
- (c.) When money, not exceeding a sum of 10*l*. (other than a periodical payment hereunder in this Rule mentioned), is pay-

able to a person residing within the United Kingdom, whose name and address are stated in an Order under which the money is payable, or in a certificate of a Chief Clerk, or of a Taxing officer, or of a Master in Lunacy, to be acted upon by the Paymaster, or whose address, in the case of a payment under an Order in the Chancery Division, is certified to the Paymaster by the solicitor having carriage of the Order, the Paymaster upon the written request of such person (without attestation) may remit the amount by post to such person at the address so ascertained. The direction for payment will be crossed so as to be payable only through a banker.

- (d.) Any person residing within the United Kingdom, entitled under an Order to any dividend, annuity, or other periodical payment, may send to the Paymaster a request, in the prescribed form, for the remittance of the same by post from time to time as it accrues due, such request to be signed by such person and attested in the manner required in the preceding part of this Rule (b), and the Paymaster shall thenceforward, as such periodical payment falls due (and upon receipt of evidence of life or of the fulfilment of any conditions of payment as referred to in Rule 95), remit the same by post to the address stated in the request. The Paymaster's direction will be crossed so as to be payable only through a banker.

Provided that the Paymaster may refuse to make a remittance under this Rule in any case in which he sees reason for so doing, and provided also that the transmission by post upon a request of any crossed direction or other document for obtaining payment shall be at the sole risk of the person at whose request it is sent.

Requests and solicitors' certificates of addresses under this Rule, and notifications of changes of addresses of persons entitled to periodical payments, shall be in such form as may from time to time be prescribed by or with the approval of the Treasury.

This rule extends the facilities for obtaining payment of money without personal attendance at the Pay Office.

-49. The directions of the Paymaster issued under these Rules (signed and countersigned by such officers as may be prescribed or approved by the Treasury, under Rule 107) shall be sufficient authority to the Bank for the payment of the money specified in any such directions, and shall be the necessary and sufficient evidence of an Order of the Court to authorise the Bank or other Company to transfer, on sale or otherwise, or to deliver, any securities or boxes or other effects standing to the Pay Office Account which may be specified in any such directions.

Paymaster's directions to be sufficient authority to the bank or other company.

By the interpretation clause Company includes Corporation.

This rule, taken with rule 107, enables the Treasury to prescribe the forms in which documents for the payment of money out of Court, sale of stock, &c., are to be issued.

50. A direction or other document by which payment of money is effected, when indorsed or signed by the payee or his lawful attorney, shall be a good discharge to the Paymaster for the amount therein expressed. Discharge to paymaster.



Sup. Court  
Funds Rules,  
1836,  
rr. 51—55.

Authorities  
for payments  
to others than  
named persons  
to be wit-  
nessed.

Payments to  
official persons  
to be made by  
transfer.

Payments for  
securities pur-  
chased; and  
transfers of  
securities sold.

Accounts to  
which invest-  
ments, sales,  
&c. are to be  
credited.

Application of  
dividends  
accruing on  
securities  
transferred.

**51.** When money is by an Order in the Queen's Bench Division directed to be paid to a person therein named, or, on his authority, to a solicitor or other person, the signature to the authority must be attested by a witness, whose residence and description must be added to his attestation.

**52.** When money in Court or any sum payable thereout is by an Order directed to be paid to any public officer or department or to the official liquidator of any Company, or any other official persons for whom an account is kept at the Bank, payment thereof shall, on a requisition to that effect, be made by a direction to the Bank to transfer the amount of such payment to the account at the Bank of such public officer or official person accordingly. When any duty is directed to be paid out of funds in Court, such duty shall, without any words in the order to that effect, be assessed, and on a requisition made by or on behalf of the Commissioners of Inland Revenue be transferred to the proper account at the Bank.

See rule 20, *supra*, and rule 66, *infra*, as to legacy and succession duty.

**53.** When money in Court is invested by purchase, the payment for such investment, which (unless otherwise ordered) shall include brokerage, shall be made conditionally upon the transfer or deposit to the Pay Office Account of the securities purchased. And when securities in Court are sold, the transfer or delivery of such securities shall be conditional upon the payment to the Pay Office Account of the proceeds of such sale, after deduction (unless otherwise ordered) of brokerage.

Provided that the Bank shall not be answerable for any default of the broker of the Supreme Court in respect of such transfer to the Pay Office Account of securities purchased, or of such payment to the Pay Office Account of the proceeds of securities sold.

Rules 69 to 75, *infra*, regulate the proceedings with respect to the investment of money.

This rule relates to the payment for an investment and the receipt of securities at the Pay Office upon a sale.

Investments are not now confined to funds in the Chancery Division, or to the limited cases in which money lodged in Admiralty actions was formerly invested. Money lodged in a Queen's Bench action can now be invested if so ordered. See note to rule 69, *infra*.

**54.** Upon an investment of money in Court or the sale of securities in Court, the securities purchased by such investment or the money realised by such sale, respectively, shall in every case be placed to the credit to which the money invested or the securities sold previously stood, unless, in the case of an investment, otherwise specially ordered.

*Funds paid into Court under Lands Clauses Act.*—See note to r. 39, *supra*, p. 737.

**55.** When securities in Court are directed to be transferred, delivered out, or carried over, dividends accruing thereon subsequently to the date of the Order directing the transfer, delivery, or carrying over (when the amount of the securities to be transferred, delivered, or carried over, is specified in such order, or if not so specified then subsequently to the time when the amount of such securities shall be ascertained) shall be paid to the persons to



whom or carried over to the credit to which the securities are to be transferred, delivered, or carried over unless such Order otherwise directs. When securities in Court are directed to be realised, and the whole of the proceeds paid out or carried over in one sum, or in aliquot parts (except when the realisation is to raise a specific sum of money), any dividends accruing on such securities subsequent to the date of the Order directing the realisation (if the amount of such securities is specified in the Order, or if not so specified, then subsequently to the time when such amount shall be ascertained) shall be added to such proceeds, and applied in like manner therewith, unless such Order otherwise directs.

Sup. Court  
Funds Rules,  
1886,  
rr. 55—60.

56. When such dividends as in the last preceding Rule mentioned have pursuant to a general or other previous Order been invested, the securities purchased with such dividends shall, unless otherwise directed, be transferred or delivered, and any dividends accrued in respect thereof be paid, to the persons to whom or carried over to the credit to which such first-mentioned dividends would if uninvested have been paid or carried over.

When such  
dividends  
have been  
invested.

57. In every case (other than that provided for by the last preceding Rule), when by an Order money or dividends are directed to be dealt with so that the same ought not to be invested, and subsequently to the date of such Order such money or dividends or any part thereof shall have been invested, the securities purchased with such money or dividends shall, unless otherwise directed, be sold and the proceeds of such sale and any dividends accrued in respect of such securities shall be applied in the same manner as the money or dividends so invested would have been applied under such Order, if they had not been so invested.

When divi-  
dends other-  
wise appli-  
cable have  
been invested.

58. When under any Order dividends on securities in Court are directed to be dealt with, and a subsequent Order is made dealing with part of such securities, the dividends on the residue shall, unless such subsequent Order shall otherwise direct, continue to be dealt with in the same manner as the dividends on such securities were by the prior Order directed to be dealt with.

Dividends on  
residue.

59. When subsequently to the date of an Order dealing with money in Court such money shall have been placed on deposit, as hereinafter provided, or when dividends accruing subsequently to the date of an Order under which such dividends are applicable shall have been placed on deposit, the same when withdrawn from deposit, and any interest credited in respect thereof, shall, unless the Order otherwise directs, be applied in the same manner as such money or dividends would have been applied had the same not been so placed on deposit.

Application  
of money or  
dividends  
placed on  
deposit after  
date of Order  
dealing there-  
with.

Cf. Chancery Funds Rules, 1874, r. 50. And as to deposit, see rules 76 to 85, *infra*. As money cannot be placed on deposit in any Division except the Chancery Division, this rule does not apply to Queen's Bench and Admiralty funds.

60. When an Order directs money in Court to be invested, and subsequently to the date of such Order the money shall have been placed on deposit, interest accruing in respect of such money shall

Application of  
interest on  
money placed  
on deposit

Sup. Court  
Funds Rules,  
1886,  
rr. 60—62.

after date  
of Order  
directing its  
investment.  
Funds ordered  
to be paid or  
transferred  
to women  
who after-  
wards marry.

be applied in the same manner as the dividends arising from such investment are directed to be applied.

61. When funds in Court are by an Order directed to be paid, transferred, or delivered to a woman in her own right who is not married at the date of the Order, or who, being married at that date, shall become a widow, and such woman shall marry before payment, transfer, or delivery of such funds, upon an affidavit of such woman and her husband that no settlement or agreement for a settlement whatsoever has been made or entered into, before, upon, or since their marriage, or in case any such settlement or agreement for a settlement has been made or entered into, then upon an affidavit of such woman and her husband identifying such settlement or agreement for a settlement, and stating that no other settlement or agreement for a settlement has been made or entered into as aforesaid, and an affidavit of the solicitor of such woman and her husband that such solicitor has carefully perused such settlement or agreement for a settlement, and that, according to the best of his judgment, such funds are not, nor is any part thereof, subject to the trusts of such settlement or agreement for a settlement, or in any manner comprised therein or affected thereby, such funds shall be paid, transferred, or delivered to such woman without the intervention or concurrence of her husband in the same manner as if she had remained unmarried.

*Effect of rule.*—This rule provides for payments to a woman who marries after the date of the order for payment to her, but before payment. It substantially provides that where no settlement has been made, funds ordered to be paid to a woman shall, on her marriage after the date of the Order, be paid to her without the intervention of her husband. As to payments directed to be made to a mother as guardian of her infant children, see S. C. Funds Rules, March, 1888, *post*, p. 773.

Payments, &c.  
to represen-  
tatives of  
deceased  
persons.

62. When funds in Court are by an Order directed to be paid, transferred, or delivered to any person named or described in an Order, or in a certificate of a Chief Clerk, or of a Taxing Officer, or of a Master in Lunacy (except to a person therein expressed to be entitled to such funds as real estate, or to be entitled thereto as a trustee, executor, or administrator, or otherwise than in his own right, or for his own use), such funds, or any portion thereof for the time being remaining unpaid or untransferred or undelivered, may, unless the Order otherwise directs, on proof of the death of such person, whether on or after, or, in the case of payment directed to be made to creditors as such, before the date of such Order, be paid or transferred or delivered to the legal personal representatives of such deceased person, or to the survivors or survivor of them.

If no administration has been taken out to any such deceased person who has died intestate and whose assets do not exceed the value of 100*l.*, including the amount of the funds directed to be so paid, transferred, or delivered to him, such funds may be paid, transferred, or delivered to the person who, being widow, child, father, mother, brother, or sister of the deceased would be entitled to take out administration to his estate, upon a declaration by such person in the Form No. 15 appended to these Rules.

The last paragraph of this rule is new.

The necessary evidence of death, &c., may be given by an attested declaration, which must be left at the Pay Office when the request for payment is made. See rule 96, *infra*, and rule 47, *supra*.



63. When money in Court is by an Order directed to be paid to any persons described in the Order, or in a certificate of a Chief Clerk, or of a Taxing Officer, or of a Master in Lunacy, as co-partners, such money may be paid to any one or more of such co-partners, or to the survivor of them.

Sup. Court  
Funds Rules,  
1886,  
rr. 63—67.

Payments, &c.  
to partners.

64. When funds in Court are by an Order directed to be paid, transferred, or delivered to any persons as legal personal representatives, such funds, or any portion thereof for the time being remaining unpaid, untransferred, or undelivered, may, upon proof of the death of any of such representatives, whether on or after the date of the Order directing such payment, transfer, or delivery, be paid, transferred, or delivered to the survivors or survivor of them.

Payments, &c.  
to surviving  
representa-  
tives.

Proof of the death may be given by an attested declaration, which must be left at the Pay Office when the request for payment is made. See rule 95, *infra*, and rule 47, *supra*.

65. No funds shall, under Rules 62 and 64, be paid, transferred, or delivered out of Court to the legal personal representatives of any person under any probate or letters of administration purporting to be granted at any time subsequent to the expiration of six years from the date of the Order directing such payment, transfer, or delivery, or in case such funds consist of interest or dividends from the date of the last receipt of such interest or dividends under such Order.

Within what  
time probate  
or letters of  
administration  
must have  
been granted.

66. The Paymaster, before acting upon an Order for the payment, transfer, or delivery of funds in respect of which legacy or succession duty is (under Rule 20) stated to be payable, shall require the production of the official receipt for such duty, or a certificate from the proper officer of the payment thereof, or that no such duty is payable; and the Paymaster, on receiving notice from the proper officer in any case that such duty is payable, shall cause a memorandum to that effect to be made in his books.

Payment of  
legacy or  
succession  
duty.

See rule 20, *supra*.

67. When costs are by an Order directed to be paid out of funds in Court, the Taxing officer shall certify the names and addresses of the persons respectively to whom such costs are payable, and the amount of any fees which have not been paid but are payable, and are proper to be paid out of such funds, in respect of any proceedings in the cause or matter, whether the amount shall or shall not have been previously ascertained, and in respect of the taxation of such costs. The Paymaster shall carry over the amount so certified to be payable from the account to which such funds are placed to an account in the Pay Office books for fees on proceedings and taxation; and the amount so carried over shall from time to time, as the Treasury may direct, be paid to the account of Her Majesty's Exchequer.

Carrying over  
fees on pro-  
ceedings and  
taxation.

See rule 12, *supra*, as to payment of costs out of funds in Court to a solicitor. See also the Order as to Court fees, *ante*, pp. 675, 678.



Sup. Court  
Funds Rules,  
1886,  
rr. 68—70.

Deduction of  
income tax  
on payments  
of annuities  
or maintenance.

**68.** In acting on Orders directing any annuities or maintenance to be paid out of dividends to accrue on securities in Court, (other than securities specifically carried over to provide for such annuities or maintenance,) the Paymaster shall draw only for so much of the sums directed by such Orders respectively to be paid as shall remain after making a deduction therefrom for income tax at the rate payable when such annuities or other payments became due, unless such sums shall be directed to be paid without making any such deduction.

## VII. INVESTMENTS.

Investment  
of accruing  
dividends  
under an  
Order.

**69.** When an Order directs the investment and accumulation of dividends accruing on securities in Court, or to be transferred into Court, or directed to be purchased with money in Court, or to be lodged in Court, the Paymaster upon receipt of the copy of such Order shall, without any request, from time to time (until he shall receive a request or copy of an Order to the contrary) invest such dividends, if amounting to or exceeding 40*l.* half yearly, together with all accumulations of dividends thereon, as soon as conveniently may be after they shall accrue due and have been received, in the particular description of securities named in the Order directing such investment and accumulation.

This part of the rules deals with investments of funds in Court. It applies to all the Divisions.

*Former practice.*—Formerly the investment of money lodged in Court to the credit of a cause or matter was almost exclusively confined to Chancery causes and matters.

In the Queen's Bench Division and the Common Law Courts and Divisions of the High Court, to whose jurisdiction the Queen's Bench Division has succeeded, investment of money in Court was practically unknown: and money lodged to abide the event of an action might, if the action was a long one, remain for a long period unproductive. The first provision for investments in the Queen's Bench Division was contained in Order XXII., rr. 15 and 16, and Appendix M of the R. S. C. 1883, by which provision was made for the investment by order of the Court of money recovered as damages by an infant.

In Admiralty actions occasional investments have been made.

*Present practice.*—Now, by the Supreme Court Funds Act, 1883, all money lodged in Court in any Division will be lodged to the credit of the Paymaster-General, and will in his hands be subject to any order of the Court respecting such money, as well as to these rules. The effect of these provisions, as applied to the Queen's Bench Division, is that where money is lodged in a Common Law action to abide the event of the action, an order for its investment can be made in any case in which the Court or a Judge thinks fit to make such an order. Probably any such order would only be made by the consent of the parties.

The dividends, interest, &c., on money invested, will be placed to the same credit as the money invested: rule 42, *supra*. Rules 53 and 54 provide for the realisation, when necessary, of the investment.

Purchase of  
Exchequer  
bills or bonds.

**70.** When money in Court is invested in Exchequer bills or Exchequer bonds, and when Exchequer bills or Exchequer bonds are, in pursuance of an Order, lodged in Court, any principal money or interest which may thereafter be received and paid into the Bank in respect of such bills or bonds, or in respect of any such bills or bonds for which the same may be exchanged, shall from time to time, as the same shall be so received and paid into the Bank, be also invested by the Paymaster, unless such Order

otherwise directs, or until he receives a written request or notice of a further Order to the contrary, in Exchequer bills or Exchequer bonds which shall be placed to the same credit.

Sup. Court  
Funds Rules,  
1886,  
rr. 70—73.

71. When and so often as any Exchequer bills or other securities deposited at the Bank to the credit of the Pay Office Account shall be in course of payment, the Bank shall, without any direction from the Paymaster, cause all such bills or other securities so in course of payment to be delivered to one of the cashiers of the Bank, who is to receive the principal money or interest due thereon, or in the case of Exchequer bills to exchange the same for new bills, if new bills are issued, or otherwise to receive the principal money and interest due on such of the said bills so in course of payment as cannot be exchanged, and pay such interest or principal and interest (as the case may be) into and deposit all such new bills in the Bank to the Pay Office Account: and the Bank shall forthwith after every such exchange or receipt of principal or interest certify to the Paymaster, without any direction from him for that purpose, the numbers, dates, and amounts of the Exchequer bills or other securities so exchanged or paid off, and also the numbers, dates, and amounts of the new bills taken in exchange, and the amount of the interest, or principal money and interest (as the case may be), received on each bill or set of bills or other securities; and upon receiving such certificate the Paymaster shall place such new bills and such principal money and interest to the credit in the books at the Pay Office to which the bills or other securities so exchanged or paid off were placed.

Bank to  
renew Ex-  
chequer bills,  
and to receive  
principal and  
interest of  
securities  
when paid off.

72. A sum of money in Court less than 40*l.* shall not be invested in securities, except in the cases provided for by the two Rules next following, and unless an Order directs such investment notwithstanding the smallness of the amount; but such sum if not less than 10*l.* shall be placed on deposit until, with the interest accrued thereon, it shall amount to 40*l.*, and shall then be invested as directed. This rule shall extend to the investment of dividends accruing on securities in Court which are directed to be invested.

Limit of  
amount to be  
invested.

The provision of this rule as to deposit applies to the Chancery Division only. See rule 77, *infra*.

73. A sum of money amounting to or exceeding 40*l.* lodged in Court, under the 32nd section of the Act 36 Geo. 3, c. 52, shall, upon a request signed by or on behalf of the person paying it in, or by or on behalf of a person claiming to be entitled thereto or interested therein, be invested (without an Order) in the Government securities specified in such request; and the dividends accruing in respect thereof, when or so soon as they shall amount to or exceed 10*l.*, shall be from time to time invested in like securities. And if such money shall have been placed on deposit before such request shall be left at the Pay Office, such money and any interest to be credited in respect thereof, if amounting to 40*l.*, shall, upon a like request, be withdrawn from deposit and invested as before mentioned. Dividends accruing on funds or on investments or accumulations of funds lodged in Court under the said Act prior to the commencement of the Chancery Funds Rules, 1872, may, when or so soon as they amount to or exceed 10*l.*, be invested in like manner.

Investment  
of money  
lodged under  
36 Geo. 3,  
c. 52.  
(Infant  
legatees.)



Sup. Court  
Funds Rules,  
1886,  
rr. 74—77.

Investment of  
money lodged  
under the  
Trustee Relief  
Act.

**74.** When it is stated in the Schedule to the affidavit made pursuant to Rule 41 that it is desired that any money to be lodged in Court, or the dividends accruing on any securities to be lodged in Court in pursuance of the Act 10 & 11 Vict. c. 96, and the accumulations thereof, shall be invested in any description of Government securities, the Paymaster shall (if or so soon as such money shall amount to or exceed 40*l.*, or so soon as dividends accruing on such securities shall amount to or exceed 10*l.*) invest the same accordingly, without any Order or further request for that purpose. If such money does not amount to 40*l.* (and is not less than 10*l.*) the Paymaster shall place such money on deposit without a request for that purpose, unless the said Schedule contains a statement that it is deemed unnecessary to place such money on deposit, or unless notice in writing be left at the Pay Office of an Order having been made, or of an intended application to the Court, affecting such money, securities, or dividends. Dividends accruing on funds or on investments or accumulations of funds lodged in Court under the said Act prior to the commencement of the Chancery Funds Rules, 1872, may, when or so soon as they amount to or exceed 10*l.*, be invested without any request.

Investing  
stayed or  
discontinued  
on request.

**75.** In all cases, upon a request signed by a solicitor acting on behalf of any person claiming to be entitled to or interested in securities in Court, that the dividends or interest accruing on any specified securities may not be invested, being at any time left at the Pay Office, the Paymaster shall be at liberty to cease to invest any more dividends or interest accruing on such securities or to place the same on deposit until he has received a copy of a Schedule in that behalf.

#### VIII.—MONEY ON DEPOSIT, AND INTEREST THEREON.

Money to be  
placed on  
deposit.

**76.** Subject to the two Rules next following all money to be lodged in Court in the Chancery Division, including dividends received in respect of securities in Court and not otherwise directed to be dealt with, shall be placed on deposit without a request. But money arising by the sale, conversion, or payment off of securities in Court in that Division shall only be placed on deposit upon a request to that effect.

Money not to  
be placed on  
deposit in  
certain cases.

**77.** Money shall not be placed on deposit in the following cases :

- (a.) In any cause or matter in the Queen's Bench or Probate Divorce and Admiralty Divisions :
- (b.) When lodged in the Chancery Division under the provisions of Order XXII. or of Rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883 :
- (c.) When lodged under the standing orders of either House of Parliament, pursuant to the Act 9 & 10 Vict. c. 20, or any Act amending the same, in respect of works or undertakings to be executed under the authority of Parliament :
- (d.) If lodged prior to the commencement of the Court of Chancery Funds Act, 1872, pursuant to the Copyhold Acts, or to section 69 of the Lands Clauses Consolidation Act, 1845 :
- (e.) When the amount is less than 10*l.* :



- (f.) When a Payment Schedule dealing with the money otherwise than by directing it to be placed on deposit or carried over has been left at the Pay Office: Sup. Court Funds Rules, 1886, rr. 77—82.
- (g.) When a request that the money shall not be placed on deposit, signed by a solicitor acting on behalf of a person claiming to be entitled to or interested in the money, is left at the Pay Office: Provided that the person making such request may at any time withdraw the same, and request that the money may be placed on deposit.

The effect of this and the last preceding rule is to confine the placing of money on deposit to money lodged in Chancery proceedings.

All money lodged in such proceedings, unless it come within one of the excepted cases referred to in this rule, at once bears interest at the rate of 2 per cent. per annum. See Chancery Funds Act, 1872, s. 14.

For forms of request for lodgment in the Chancery Division, see *post*, pp. 765, 766.

**78.** Money shall be withdrawn from deposit in the following cases:— When money shall be withdrawn from deposit.

- (a.) When and to such an amount as the money is by an Order directed to be dealt with, otherwise than by carrying over:
- (b.) When the amount is reduced below 10l.:
- (c.) Upon a request signed by a solicitor acting on behalf of a person interested, and countersigned by a Registrar or Chief Clerk, containing a notification that the money is about to be dealt with by an Order.

**79.** The placing on deposit of money lodged in Court shall not be deferred beyond the 15th or the last day of the month in which it shall be lodged in Court, whichever day shall first happen after such lodgment, or in the case of money lodged in Court on the last day of a month, the placing on deposit shall not be deferred beyond the 15th day of the following month; and when a request to place money in Court on deposit shall be sent to or left at the Pay Office, the money shall be so placed on the day next following that on which such request shall be so left or received at the Pay Office. Time for placing money on deposit.

**80.** When an Order directs Government securities to be sold and the whole of the money arising thereby to be placed on deposit, and when such securities are realised by exchange as hereinafter provided, such money shall be deemed to have been placed on deposit (without a request for that purpose) on the day on which such exchange shall be effected. As to placing on deposit cash arising from conversion of Government securities.

As to exchanges, see Part IX., *infra*.

**81.** Interest upon money on deposit shall not be computed on a fraction of 1l. No interest computed on a fraction of 1l.

**82.** Except as in this Rule otherwise provided, interest upon money on deposit shall accrue by half calendar months, and shall not be computed for any less period. The periods from the 1st to the 15th of a month, both days inclusive, and from the 16th to the last day of a month, both days inclusive, shall, for the purpose of computing such interest, be reckoned as half calendar months; and such interest shall begin on the first day of the half calendar month For what periods interest is to be computed.

Sup. Court  
Funds Rules,  
1886,  
rr. 82—87.

next succeeding that in which the money is placed on deposit, and shall cease from the last day of the half calendar month next preceding the withdrawal of the money from deposit: Provided that when a sum of money in Court amounting to not less than 500*l*. shall be placed on deposit, pursuant to a request signed by or on behalf of a person claiming to be interested therein, and shall remain on deposit undealt with until the 1st of April or the 1st of October next succeeding the day on which it is placed on deposit, interest shall begin on the day inclusive next succeeding such day of placing on deposit.

When interest is to be credited.

**83.** Interest which has accrued for or during the half years ending respectively the 31st of March and the 30th of September in every year on money then on deposit shall, on or before the 15th days of the months respectively following, be placed by the Paymaster to the credit to which such money shall be standing on every such half-yearly day. And when money on deposit is withdrawn from deposit, the interest thereon which has accrued and has not been credited shall be placed to the credit to which the money is then standing.

Mode of calculating interest in certain cases on parts of money withdrawn.

**84.** When money on deposit consists of sums which have been placed on deposit at different times, and an Order is made dealing with the money, and part of such money has to be withdrawn from deposit for the purpose of executing such Order, the part or parts of the money dealt with by such Order last placed and remaining on deposit at the time of such withdrawal shall, for the purpose of computing interest, be treated as so withdrawn, unless the Order otherwise directs.

Placing of interest on deposit.

**85.** Unless otherwise directed by an Order, interest credited on money on deposit shall, when or so soon as it amounts to or exceeds 10*l*., be placed on deposit, and for the purpose of computing interest upon it shall be treated as having been placed on deposit on the last half-yearly day on which any such interest became due.

#### IX. EXCHANGE OR CONVERSION OF GOVERNMENT SECURITIES AND TRANSACTIONS WITH THE NATIONAL DEBT COMMISSIONERS.

Exchanges of securities in lieu of actual purchases and sales.

**86.** When Government securities in Court are directed to be sold, such securities may be realised by exchange in the Pay Office books in the manner hereinafter provided. And when money in Court is required to be invested in Government securities, such investment may be made by exchange in like manner.

The rules contained in this part are made under the powers conferred by section 30 of S. C. Jud. Act, 1875. See *ante*, p. 81.

Substantially they deal with a matter of financial detail between the Paymaster-General's Department and that of the National Debt Commissioners.

Manner of recording such exchanges.

**87.** For the purpose of effecting any such exchange, an account of each description of Government securities shall be kept at the Pay Office, entitled "Exchange Accounts," and such accounts shall contain on the one side thereof the amount of securities received in exchange for money, and the amount of money received in exchange



for securities, and on the other side thereof the amount of money and securities given in exchange for such securities and money respectively. The money value of the securities received or given in exchange under this Rule shall be determined by the price of the day next following that on which the Paymaster is required or authorised to make the sale or investment; or if the money invested consist of dividends accrued on securities in Court, and previously to the accruing thereof, required or authorised to be invested in Government securities, the price of the day next following that on which such dividends shall be placed by the Bank to the Pay Office Account; or if no price can be ascertained for such day then the price of the next following day for which it can be ascertained. The price herein mentioned shall be the Bank average price of the Government securities appearing in the account transmitted to the Controller General of the National Debt Office by the cashiers of the Bank, a copy whereof shall be sent daily by the Bank to the Pay Office.

Sup. Court  
Funds Rules,  
1886,  
rr. 87—89.

88. Upon every such exchange a commission shall be charged of one eighth per cent. on the amount of money realised or invested, in lieu of any brokerage provided for by the Order or usually charged upon the sale or purchase of such securities; and unless the payment thereof is otherwise provided for by the Order, such commission shall be deducted from the proceeds of the realisation or the amount to be invested respectively, or in case a specific amount of money is to be realised, the commission upon it shall also be realised by the exchange of an additional amount of the securities by which the realisation is to be effected; and when the payment of brokerage is otherwise provided for, the Paymaster shall not be required to give effect to any such exchange until such commission has been paid into the Bank to the Pay Office Account. Such commission, when so paid in or realised and deducted as aforesaid, shall be placed to an account in the Pay Office books for commission on exchanges; and the amount so placed shall from time to time, as the Treasury may direct, be transferred to the account of Her Majesty's Exchequer.

Commission  
to be charged  
on exchanges  
and paid to  
the Ex-  
chequer.

89. The Paymaster shall, from time to time, but not less than once in every year, prepare and transmit to the National Debt Commissioners a statement of the result of the exchange operations under these Rules, showing the total amounts of each description of Government securities purchased by exchange and realised by exchange, respectively; and the total amounts of the cash charged and credited, respectively, in the Pay Office books as the money value of the securities exchanged. And the difference so arising between the amount of any description of Government securities standing to the credit of the Pay Office Account at the Bank and the amount of such securities appearing by the books of the Pay Office to be in Court, and also the difference between the money value nominally paid and nominally received for such securities, shall be forthwith adjusted as follows:—

Periodical  
adjustment of  
exchange  
account.

(a.) If such statement shows that the total amount of any description of Government securities purchased by exchange is in excess of the total amount of the same description of securities



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Funds Rules,  
1886,  
rr. 89—92.

realised by exchange, the amount of such excess of securities purchased by exchange shall be transferred by the National Debt Commissioners from their account at the Bank on behalf of the Supreme Court to the Pay Office Account at the Bank. And such transfer of securities shall be treated as a repayment by the said Commissioners, out of the money placed in their hands by the Paymaster on behalf of the Supreme Court, of the difference between the cash charged and credited respectively in the Pay Office books in respect of such exchanges, as shown in the said statement.

- (b.) If such statement shows that the total amount of any description of Government securities purchased by exchange is less than the total amount of the same description of securities realised by exchange, the amount of the excess of securities realised by exchange shall be transferred by the Paymaster to the account at the Bank of the National Debt Commissioners on behalf of the Supreme Court. And the money value of the securities so transferred (being the difference between the cash charged and credited, respectively, in the Pay Office books in respect of such exchanges, as shown in the said statement), shall be placed by the National Debt Commissioners to the credit of the account kept by them of money placed in their hands by the Paymaster on behalf of the Supreme Court.

Adjustment of  
dividends on  
Government  
securities in  
Court.

90. The Paymaster shall from time to time prepare and transmit to the National Debt Commissioners a statement showing the amount of the dividends, less income tax, which became payable in the period to which such statement relates, on the Government securities in Court (at the closing of the Bank books for such dividends) as shown by the Pay Office books, and the amount of the dividends received in the same period on the Government securities standing to the credit of the Pay Office Account at the Bank; and the difference appearing thereby shall be adjusted as follows:—

- (a.) If the amount of dividends payable shall have exceeded the amount of dividends received, the amount of the difference shall be credited by the National Debt Commissioners to the account kept by them of money placed in their hands by the Paymaster on behalf of the Supreme Court.
- (b.) If the amount of dividends received shall have exceeded the amount of dividends payable, the amount of the difference shall be transferred by the Paymaster to the account at the Bank of the National Debt Commissioners on behalf of the Supreme Court.

Surplus of  
money on the  
Pay Office  
Account to be  
transferred to  
the National  
Debt Com-  
missioners.

91. When the money to the credit of the Pay Office Account is, in the opinion of the Paymaster, in excess of the amount required for the purpose of making current payments, he shall transfer the amount of such excess from the Pay Office Account to the account at the Bank of the National Debt Commissioners on behalf of the Supreme Court, and shall notify such transfer to the said Commissioners.

Deficiency of  
money on the  
Pay Office

92. When the money to the credit of the Pay Office Account is, in the opinion of the Paymaster, insufficient for the purpose of

making current payments, the National Debt Commissioners upon a request in writing of the Paymaster shall forthwith transfer from their account at the Bank on behalf of the Supreme Court to the Pay Office Account the amount of money specified in such request.

Sup. Court  
Funds Rules,  
1886,  
rr. 92—96.

93. The Paymaster shall, after the 31st March and 30th September in every year, certify to the National Debt Commissioners the amount of interest on money on deposit which has accrued for or during the half years respectively ending on those days; and the National Debt Commissioners, as soon thereafter as may be, shall place such amount to the credit of the account kept by them of money placed in their hands by the Paymaster on behalf of the Supreme Court, and shall cause the amount of income tax (if any) chargeable on such interest to be paid to the account at the Bank of the Receiver General of Inland Revenue.

Account to be  
made good by  
National Debt  
Commis-  
sioners.

National Debt  
Commis-  
sioners to give  
credit for  
interest on  
money on  
deposit.

#### X.—CALCULATION OF RESIDUES, EVIDENCE OF LIFE, &c.

94. For the purpose of ascertaining the amounts of any residue or aliquot part of money or securities dealt with by an Order, when such amounts cannot be stated in the Payment Schedule and are not directed to be certified, the necessary calculations shall be made in the Pay Office: Provided that the Paymaster may require such calculations to be first stated in a certificate signed by the solicitor of the party interested.

Calculations  
of residues to  
be made in  
Pay Office.

Before this rule was made it was necessary, in a large majority of cases, when the ascertaining of an amount to be dealt with by the paymaster depended on calculation, to have an affidavit from the solicitor of the party interested.

This rule does away with the necessity for this affidavit in all cases in which the necessary calculations can be made in the Pay Office.

95. When any person is entitled, under an Order, to receive dividends or other periodical payments from the Pay Office, and the Paymaster requires evidence of life or of the fulfilment of any conditions affecting such payments, such evidence may be furnished by a declaration signed by a solicitor acting on behalf of such person, or by a declaration signed by the person entitled to the payment, and attested by a justice of the peace, commissioner to administer oaths, clerk in holy orders, or notary public; and the Paymaster shall act on such evidence unless in any case he thinks fit to require such evidence to be by statutory declaration or affidavit. The Paymaster may prescribe, with the approval of the Treasury, the terms in which such declarations or affidavit shall be made, and the forms to be used for that purpose. The provisions of this Rule shall apply to Orders made before these Rules come into operation, notwithstanding anything as to evidence in such Orders contained.

Evidence of  
life, &c.

The declaration under this rule may be sent by post.

96. When in carrying into effect the directions of an Order evidence is required by the Paymaster for any purposes other than those included in the immediately preceding Rules, he may receive and act upon an affidavit, or upon a statutory declaration, and every

Affidavits in  
other cases.



Sup. Court  
Funds Rules,  
1886,  
rr. 96—100.

such affidavit or statutory declaration shall be filed in the Central Office when the Paymaster shall consider it necessary.

See the Order as to Court Fees, *ante*, p. 678, under which no fee is necessary on an affidavit for the purpose of receiving a dividend.

#### XI.—COPIES OF ORDERS AND OTHER DOCUMENTS FOR AUDIT OFFICE.

Office copy of  
schedules, &c.,  
to be sent to  
Audit Office.

**97.** An office copy of the Schedules to every Order in the Chancery Division and in Lunacy, and, when requested, an office copy of any Order in the Queen's Bench and Probate, Divorce and Admiralty Divisions, to be acted upon by the Paymaster, shall be transmitted by the proper officer to the Audit Office; and in case of any amendments being made in any such Schedule or Order, such office copy shall be likewise amended.

Office copy of  
certificates and  
other docu-  
ments to be  
sent.

**98.** An office copy of every certificate or other authority of a Master of the Supreme Court, Chief Clerk, or Taxing officer, or of a Master in Lunacy, which is to be acted upon by the Paymaster, or so much thereof as may be necessary, and an office copy of any certificate, affidavit, or statutory declaration which may be received in evidence by the Paymaster, shall, when requested, be transmitted by the proper officer to the Audit Office.

#### XII.—MISCELLANEOUS.

Paymaster to  
give certi-  
ficates of funds  
in Court.

**99.** The Paymaster, upon a request signed by or on behalf of a person claiming to be interested in any funds in Court standing to the credit of an account specified in such request, may, in his discretion, issue a certificate of the amount and description of such funds, and such certificate shall have reference to the morning of the day of the date thereof, and shall not include the transactions of that day, and the Paymaster shall notify on such certificate the dates of any Orders restraining the transfer, sale, delivery out, or payment, or other dealing with the funds in Court to the credit of the account mentioned in such certificate, and whether such Orders affect principal or interest, and any charging Orders, affecting such funds, of which respectively he has received notice, and the names of the persons to whom notice is to be given, or in whose favour such restraining or charging Orders have been made. The Paymaster may re-date any such certificate, provided that no alteration in the amount or description of the funds has been made since the certificate was issued. And when a cause or matter has been inserted in the list referred to in Rule 101, the fact shall be notified on the certificate relating thereto.

The Court fee payable for the certificate is one shilling. See Order as to Court Fees, *ante*, p. 670.

Paymaster  
may issue  
transcripts of  
accounts and  
furnish other  
information.

**100.** Upon a request signed by or on behalf of a person claiming to be interested in funds in Court, the Paymaster may, in his discretion, issue a transcript of the account in his books specified in such request; and if so required by the person to whom it is issued, such transcript shall be authenticated at the Audit Office. He may also upon a like request supply such other information or issue such certificates with respect to any transactions or dealings



with funds in Court as may from time to time be required in any particular case.

The Court fee for this transcript is two shillings : see *ante*, p. 678.

Sup. Court  
Funds Rules,  
1886,  
rr. 100—104.

**101.** On or before the 1st day of March in every third year the Paymaster shall prepare, in such form and with such particulars as the Treasury may from time to time direct, a list or statement of the accounts in the books of the Pay Office (other than those referred to in the next following Rule) to the credit of which there stood on the 1st day of September then next preceding any funds not less than 50*l.*, which have not been dealt with, otherwise than by the continuous investment or placing on deposit of dividends, during the 15 years immediately preceding the last-mentioned date.

List of dormant funds, &c., to be made triennially and published.

The said list or statement shall be filed in the Central Office, and a copy thereof shall be inserted in the "London Gazette" and exhibited in the several offices of the Court.

The Paymaster shall not give any information respecting any funds in Court mentioned in such list or statement except upon a request signed by the person applying for such information. If such request be made by a solicitor, such information shall not be given unless the request states the name of the person on whose behalf it is made, and that such person is in the opinion of the applicant beneficially interested in such funds. If such request be made by any person other than a solicitor, such information shall not be given unless the applicant is able to satisfy the Paymaster that the request is such as may in the particular case be properly complied with.

**102.** The Paymaster may from time to time carry over to a special account for small balances such balances of money and securities as do not together amount to 5*l.*, and on which the money or securities shall not have been dealt with during the preceding five years. When an Order dealing with funds carried over under this Rule is to be acted upon, the Paymaster shall carry back such funds and any dividends accrued thereon to the account from which they were so carried over, and shall deal therewith as directed by such Order.

Transfer of small balances to a special account.

**103.** The length of the title of any ledger credit shall not exceed 36 words, exclusive, in the case of a separate account in a cause or matter, of the title of the cause or matter in which such separate account is opened : Provided that such title may be extended beyond 36 words if a sufficient reason be assigned to the satisfaction of the Registrar or Master of the Supreme Court; and the Registrar or Master shall in such case add to the instruction to open such credit the words "notwithstanding Rule 103"; and provided also that the Paymaster may extend any such title if in his opinion a sufficient reason be assigned for so doing. In such title four figures shall be reckoned as one word.

Titles of accounts not to exceed 36 words.

**104.** Unpaid cheques signed by the late Accountant General, or any of his predecessors, shall be a sufficient authority to the Paymaster for making the payments therein purporting to be intended to be made.

Outstanding cheques of late Accountant General.

Sup. Court  
Funds Rules,  
1886,  
rr. 105—110.

Index of docu-  
ments filed.

Names and  
addresses of  
suitors.

Paymaster's  
directions to  
be issued and  
signed as  
Treasury may  
prescribe.

Identification  
of persons to  
be paid, &c.

When stocks  
or shares of  
companies or  
other securities  
are converted.

When allot-  
ments of new

**105.** An index shall be made and kept in the Central Office of all documents by these Rules directed to be filed there.

**106.** Upon the request of any person, or of a solicitor acting on behalf of any person, named in an Order and entitled to or interested in funds in Court, the Paymaster shall record, in such manner as he shall consider convenient for reference, the name and address of such person, or of the solicitor for the time being acting on his behalf, and also any change of such address which may be notified to him.

**107.** The directions of the Paymaster for giving effect to these Rules shall be prepared and issued in such form and manner as the Treasury may from time to time direct, and shall be signed by such officers as the Treasury may prescribe or approve.

**108.** It shall be the duty of the Paymaster to comply with any instructions which may be given to him by the Treasury as to the means of identifying any person to whom a direction for payment of money or for delivery of securities out of Court is issued, when such identification may be deemed necessary.

Under this rule the Treasury will be able to prescribe regulations as to identification in all necessary cases.

**109.** Whenever any amount or number of stock, shares, or other security in Court (in this Rule referred to as the original security) is converted into any other stock, shares, or other security (in this Rule referred to as the substituted security), so that the description thereof will differ from the description given of the original security in the Order or other authority under which the Paymaster acts respecting the same, the Paymaster shall write off from the account to which the same may be standing the original security so converted, and shall place to the same account a proportionate part of the substituted security; and except in so far as any original security may be affected by any Order brought to the Pay Office in due time for that purpose, the Paymaster shall, as far as may be practicable, give effect to every part of any Order or other authority under which he has been acting which shall refer to any such original security so converted as aforesaid, or the dividends thereon, as if it referred to the substituted security or the dividends thereon. Provided that payments of income shall not be made in pursuance hereof, without an Order, in any case where the substituted security is a terminable annuity; unless such terminable annuity is based upon a deduction for sinking fund intended to replace the capital of the original security.

The provisions of this and the next succeeding rule were formerly contained in a general Order made by the Lord Chancellor and the Treasury under the Chancery Funds Act, 1872. They meet a difficulty which formerly used to arise when conversions of stock in allotments of new stock were made by companies in whose books stock was held by the Paymaster-General for the credit of causes or matters in Court.

**110.** Whenever any allotment letters, scrip allotments, or other securities are allotted or assigned in respect of any sums of stock,

or of any shares or other security in Court, such allotment letters, scrip allotments, or other securities (excepting such of them, if any, as may be affected by any Order of which the Paymaster has notice) shall be sold. The money to arise by the said sale shall be paid (without deduction for brokerage) by the broker to the Pay Office Account at the Bank and placed in the books of the Pay Office to the respective accounts to which the said stock or shares or other security are standing, in respect of which such allotment letters, scrip allotments, or other securities have been allotted or assigned.

Sup. Court  
Funds Rules,  
1886,  
rr. 110, 111.

stock are made  
by companies.

111. These Rules shall not apply in District Registries to funds in Court or hereafter lodged in Court.

Rules not to  
apply to  
district regis-  
tries.

See, as to funds in District Registries, O. XXXV., r. 23; see also the judgment of Chitty, J., in *Wilson v. Alltree*, 27 Ch. D. 242.

See now S. C. (District Registry) Funds Rules, 1887, *post*, p. 771, as to funds in the District Registries of Liverpool and Manchester.

HERSCHELL, C.

26th July, 1886.

We certify that these Rules are made with the concurrence of the Commissioners of Her Majesty's Treasury.

W. V. HARCOURT.  
CYRIL FLOWER.



Sup. Court  
Funds Rules,  
1886,  
App. No. 1.

## APPENDIX.

### FORM No. 1.

[Lodgment Schedule referred to in Rule 5.]

#### LODGMET SCHEDULE.

In the High Court of Justice,  
Chancery Division.

Date of Order, 18 .

Title of Cause or Matter, 18 . A. No. .  
Lodger credit. [If same as title of cause, state "As above."]

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.			
		Money.			Securities.

[See specimen entries below.]

[Specimen Lodgment Schedules.]

In the High Court of Justice,  
Chancery Division.

21st July, 1886.

*Re Morton*, deceased, *Morton v. Matthews*. 1881. M. 391.

Lodger credit. As above.

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Balance to be certified on passing final account as Receiver.	Edmund James White (the Receiver).						
Balance to be certified of the 87l. 5s. 9d. due from him as Executor after retaining his costs.	James Matthews (Defendant).						

[Specimen Lodgment Schedules—continued.]

In the High Court of Justice,  
Chancery Division.

15th June, 1886.

A. v. B. 1883. A. 16.  
Ledger credit. As above.

Sup. Court  
Funds Rules,  
1886,  
App. No. 1.

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Consols .....	J. A. and J. B. .				15,000	0	0
Great Western Railway 4 p. c. Debenture Stock.	Do.				1,500	0	0
Balance of cash to be certified. Invest and accumulate in Consols.	J. B.						

[Specimen Lodgment Schedule of purchase-money to be signed by a Chief Clerk.]

In the High Court of Justice,  
Chancery Division.

A. v. B. 1885. A. 16.

Ledger credit. The said action. Proceeds of sale of real estate.

LODGMET SCHEDULE.

Purchase-money to be lodged pursuant to Order dated 31st July, 1886.

Particulars of Money to be lodged.	Person to make the Lodgment.	Amount.		
		£	s.	d.
Deposit .....	T. A., the Auctioneer..	20	0	0
Balance of purchase-money and interest.	W. K., the Purchaser..	195	0	0
Invest and accumulate amounts lodged in Consols.				
The above funds not to be paid out, transferred, or dealt with, without notice to the said W. K.				
		£ 215	0	0

Total amount }  
in words. } Two hundred and fifteen pounds.

Dated this 10th day of August, 1886.

, Chief Clerk.

Sup. Court  
Funds Rules,  
1886,  
App. No. 2.

FORM No. 2.

[Payment Schedule, referred to in Rule 6.]

## PAYMENT SCHEDULE.

In the High Court of Justice,  
Chancery Division.

Date of Order, 18 .

Title of Cause or Matter, 18 . A. No. .

Ledger credit. [If same as title of cause, state "As above."]

Funds in Court.

Particulars of payments, transfers, or other operations ordered.	Payees and transferees, or separate accounts.	Amounts.					
		Money.			Securities.		

[See Specimen entries below.]

[Specimen Payment Schedules.]

In the High Court of Justice,  
Chancery Division.

2 August, 1886.

B. v. D. 1883. B. 165.

Ledger credit. As above.

Funds in Court } 730*l.* 7*s.* 7*d.*, New Three per Cent. Annuities.  
10*l.* 13*s.* 2*d.* Cash.

Particulars of payments, transfers, or other operations ordered.	Payees and transferees, or separate accounts.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Pay .....	John Park .....	5	6	7			
Sell New Three per Cent. Annuities.	.....	..	..	..	730	7	7
Out of proceeds and balance of funds pay:							
Costs of Petitioners to be taxed.							
Legacy duty in respect of fund in Court.							
Divide residue in fourths, and pay as under:—							
One-fourth .....	John Smith (Petitioner).						
One-fourth .....	Emma Joy (Petitioner), wife of Wm. Joy, on her separate receipt.						
Out of one-fourth Residue of such one- fourth.	Eliza Joy (Widow) Edward Sparkes..	79	10	6			
Carry over one-fourth. Invest and accumulate in New Three per Cent. Annuities.	Separate account of William Peters (Plaintiff).						



[Specimen Payment Schedules—continued.]

In the High Court of Justice,  
Chancery Division.

4th September, 1886.

*Smith v. Williams.* 1871. S. 103.Ledger credit. The said cause. Trust legacy of 800*l.* for Charles Pearce and Susan his wife and their children and incumbrancers.

Funds in Court .. { 308*l.* 4*s.* 1*d.* Consolidated 3 per Cent. Annuities.  
 512*l.* 11*s.* New 3 per Cent. Annuities.  
 50*l.* Money on deposit.  
 48*l.* 1*s.* 3*d.* Cash.

Sup. Court  
Funds Rules,  
1886,  
App. No. 2.

Particulars of payments, transfers or other operations ordered.	Payees and transferees, or separate accounts.	Amounts.					
		Money.			Securities.		
		£	s.	d.	£	s.	d.
Sell Consols .....	.....	..	..	..	308	4	1
Sell New 3 per Cent. Annuities. ....	.....	..	..	..	512	11	0
Pay .....	{ David Shore .. } { Charles Weaver }	45	5	2			
Pay taxed costs of George Turner.							
Pay residue of funds as under:—							
One-fifth .....	George Turner ..						
Out of one-fifth ..	James Watson ..	100	0	0			
Residue of last-named one-fifth	Birmingham Banking Company, mortgagees.						
Out of one-fifth ..	Henry Earle (as mortgagee).	140	8	4			
Out of same one-fifth, interest on 100 <i>l.</i> at 5 <i>l.</i> per cent. per annum from 18 to day for payment.	The same.						
Residue of last-named one-fifth.	Robert Wild and Joseph Hunter, trustees of Arthur Turner.						
One-fifth .....	Matthew Field ..						
One-fifth .....	William Long ..						

SUPREME COURT FUNDS RULES, 1886.—FORMS.

Sup. Court  
Funds Rules,  
1886,  
App. No. 3.

FORM No. 3.

[Combined Lodgment and Payment Schedule, referred to in Rule 8.]

LODGMET AND PAYMENT SCHEDULE.

In the High Court of Justice,  
Chancery Division.

Date of Order, 18 .

Title of Cause or Matter, . 18 . A. No. .

Ledger Credit. [If same as title of cause, state "As above."]

I. LODGMET.

Particulars of Funds to be lodged.	Person to make the Lodgment.	Amounts.					
		Money.			Securities.		

II. PAYMENT.

Funds to be dealt with } £ Consolidated 3 per Cent. Annuities.  
                                  } £ Cash.  
                                  } Funds to be lodged as above.

Particulars of payments, transfers, or other operations ordered.	Payees, transferees, or separate accounts.	Amounts.					
		Money.			Securities.		

## FORM No. 4.

[Certificate of ascertained sums, referred to in Rule 11.]

Sup. Court  
Funds Rules,  
1886,  
App. Nos. 4, 5.

## HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Title of Cause or Matter,  
Ledger credit. [If same as title of cause, state "As above."]

I certify that under an Order dated , 18 , the sums stated in the Schedule subjoined hereto, amounting in the whole to , have been ascertained to be the sums payable under the said Order to the persons respectively named, in respect of [state in what character paid].

Dated this day of , 18 ,  
 , Chief Clerk [or Taxing  
 Officer].

## SCHEDULE.

Name.	Address (if ascertained).	Amount to be paid.		

## FORM No. 5.

[Certificate of taxed costs, referred to in Rule 12.]

## HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Title of Cause or Matter

Ledger credit. [If same as title of cause, state "As above."]

In pursuance of an order dated , 18 , I have been attended by the solicitors for , and I certify that I have taxed the costs specified in the Schedule subjoined hereto, directed to be taxed by the said Order, at the sums respectively stated in the Schedule, which sums, with the fees of taxation specified (if any), amount to the total sum of

Dated this day of , 18 ,  
 , Taxing Officer.

## SCHEDULE.

Costs of.	Payable to		Amount of taxed costs and fees.		
	Name.	Address.			
		Total.....£			



## SUPREME COURT FUNDS RULES, 1886.—FORMS.

Sup. Court  
Funds Rules,  
1886,  
App. Nos. 6, 7.

FORM No. 6.

[Certificate of execution of documents, referred to in Rule 18.]

## HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

Title of Cause or Matter,

Ledger credit. [If same as title of cause, state "As above."]

An Order of the Court, dated \_\_\_\_\_, 18, having directed that the under-mentioned dealings with the funds specified shall be contingent upon the execution of [here describe the document to be executed], I hereby certify (pursuant to Rule 18 of the Supreme Court Funds Rules) that the said document has been executed as directed in the said Order.

Whether payment, transfer, or other operation; and description of securities (if any).	Name of payee, transferee, or separate account.	Amounts to be dealt with.			
		Money.		Securities.	
	Totals.....£				

Amounts in words. { Money  
[Total only of each money column.] { Securities

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 188 .

\_\_\_\_\_, Chief Clerk [or Master  
in Lunacy].

FORM No. 7.

[Order for Payment in Queen's Bench and Probate Divorce and Admiralty Divisions, referred to in Rule 28.]

## HIGH COURT OF JUSTICE.—

DIVISION.

Title of Cause or Matter }  
\_\_\_\_\_ v. \_\_\_\_\_ . 18 . A. No. .  
Ledger credit. [Name of ship in Admiralty actions.]

Date, \_\_\_\_\_, 18 .

The Paymaster-General is hereby directed to make the payments specified below out of the money standing in his books to the credit of the above cause or matter.

Name of the person to whom, and also of the person (if any) upon whose authority, payment is to be made.		Particulars.	Amount to be paid.		
Person to be paid. [Christian name to precede surname.]	Person (if any) to give authority for payment.				

Total amount }  
in words. }

(Signature)



## SUPREME COURT FUNDS RULES, 1886.—FORMS.

**Sup. Court  
Funds Rules,  
1886, App.  
Nos. 9, 10.**

II.—*Paymaster's Direction for Lodgment or Transfer.*

Authority is hereby given for the lodgment or transfer of the above-mentioned securities to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

(Date)

18 .

III.—*Certificate of Lodgment or Transfer.*

Address

Date

, 18 .

It is hereby certified that in accordance with the above authority the securities herein mentioned have this day been lodged or transferred to the account of the Paymaster-General.

(Signature)

N.B.—Under the Supreme Court Funds Rules made in pursuance of Acts of Parliament, the Bank or other Company in whose books the transfer herein authorized is made, is required to certify such transfer hereon, and to return this document to the Assistant Paymaster-General, Royal Courts of Justice, London.

## FORM No. 10.

[*Request for Lodgment in Chancery Division under Orders XXII. and XXXI., referred to in Rule 30.*]

## HIGH COURT OF JUSTICE.—CHANCERY DIVISION.

I.—*Request for Lodgment of Money under Order XXII. or Rule 26 of Order XXXI.*

Title of  
Cause or  
Matter }

v.

18 . A. No. .

Ledger credit }  
to which lodged } [*If same as title of cause, state "As above."*]

The Paymaster is requested to issue a direction to the bank to receive £ ;  
which amount is paid in\*

(Signature)

\*Insert one of the following statements, in accordance with the circumstances :—

- (A.) "on behalf of defendant [*state name*] in satisfaction of claim of above-named" [*state name of party*] (or "with defence setting up tender").
- (B.) "on behalf of defendant [*state name*] against claim of above-named" [*state name of party*], "with defence denying liability."
- (C.) "to security for costs account on behalf of" [*state name of party, and whether plaintiff or defendant*].

II.—*Paymaster's Direction for Lodgment.*

To the Agent of the Bank of England (Law Courts Branch).

Please receive the above-stated sum, and place it to the account of the Paymaster General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

(Date)

18 .



Sup. Court  
Funds Rules,  
1886, App.  
Nos. 10, 11.

III.—*Bank Certificate of Receipt.*

To the Assistant Paymaster-General.

Bank of England, 18 .

The above-stated sum has been this day received.

(Signature) .

Form No 11.

[*Request for Lodgment in Queen's Bench Division, referred to in Rule 32.*]

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

I.—*Request for Lodgment of Money.*

Title of }  
Cause or }  
Matter }

v. 18 . A. No.

To the Agent of the Bank of England (Law Courts Branch).

Please receive £ , for the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature, which amount is paid in\*

(Signature) .

Name of Solicitor on the other side .

Solicitor for the  
(Date) 18 .

\*Insert one of the following statements, in accordance with the circumstances :—

- (A.) "on behalf of defendant [*state name*] in satisfaction of claim of above-named" [*state name of party*] (or "with defence setting up tender").
- (B.) "on behalf of defendant [*state name*] against claim of above-named" [*state name of party*], "with defence denying liability."
- (C.) "to security for costs account on behalf of" [*state name of party, and whether plaintiff or defendant*].
- (D.) If lodged in pursuance of an order, or otherwise than as above, state nature and date of authority. For instance :—"Under Order dated day of 18 , " or "On notice of appeal [in bankruptcy], dated day of 18 ."

II.—*Bank Certificate of Receipt.*

To the Assistant Paymaster-General.

Bank of England, 18 .

The above-stated sum has been this day received.

(Signature)

Sup. Court  
Funds Rules,  
1886, App.  
Nos. 12, 13.

FORM No. 12.

[Request for Lodgment in Probate Divorce and Admiralty Division, referred to in Rule 34.]

HIGH COURT OF JUSTICE.—PROBATE DIVORCE AND ADMIRALTY DIVISION.

### I.—Request for Authority for Lodgment.

Title of }  
Cause or }  
Matter }

Ledger credit. [*Name of ship in Admiralty actions.*]

To the Registrar.

I request authority for the lodgment of £                      at the Bank of England;  
such lodgment being for\*

(Signature)

\* State here such particulars as may be required.

## II.—*Authority for Lodgment.*

To the Agent of the Bank of England (Law Courts Branch).

Please receive the above-stated sum and place it to the account of the Paymaster-General for the time being for and on behalf of the Supreme Court of Judicature.

(Signature)

(Date)

18

### III.—*Bank Certificate of Receipt.*

To the Assistant Paymaster-General.

Bank of England 18

The above-stated sum has been this day received.

(Signature)

## FORM No. 13.

[Notice of Appropriation of Money lodged in Queen's Bench Division, under Order XIV., referred to in Rule 43.]

HIGH COURT OF JUSTICE.—QUEEN'S BENCH DIVISION.

*Notice of Appropriation (under Rule 43 of the Supreme Court Funds Rules) of Money lodged under Order XIV.*

Title of Cause or Matter	v.	18 . A. No. .
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To the Assistant Paymaster-General.

Date 18 .

Take notice that £                      of the money lodged in Court in the above action under Order dated                      18                      , is appropriated by the defendant [*state name of party*], in respect of the plaintiff's claim, as under, viz.:—\*

(Signature)

\* Insert one of the following statements, as may be intended:—

(A.) "in satisfaction of claim of plaintiff" [*state name of party*].

(B.) "against claim of plaintiff" [state name of party] "with a defence denying liability."

FORM No. 14 (A).

Sup. Court  
Funds Rules,  
1886,  
App. No. 14.

[Request for payment of money lodged "in satisfaction," referred to in Rule 44 (A).]

HIGH COURT OF JUSTICE.—

DIVISION.

Request for payment of money lodged, or appropriated, in satisfaction of claim  
[under Rule 5 or Rule 11 of Order XXII.].

Title of }  
Cause or }  
Matter }  
v. 18 . A. No. .

Ledger credit }  
[In Chancery Division.] } [If same as title of cause, state, "As above."]

To the Assistant Paymaster-General.

I hereby request that payment of the sum of £ , paid in in the  
above action may be made to\*

(Signature)

(Address)

(Date) 18 .

\* N.B.—If payment is to be made to the plaintiff's solicitor, the plaintiff must himself sign the request, and insert therein the words "*the solicitor to me, the plaintiff*" (naming such solicitor); but if payment is to be made to the plaintiff in person, the request may be signed either by the plaintiff, who should insert, "*me, the plaintiff*" or by the solicitor of the plaintiff, who must insert "*the plaintiff*" (naming him). Payment will be made by a crossed cheque or crossed form of receipt, which must be passed through a bank.

FORM No. 14 (B).

[Request for payment of money lodged "against claim" referred to in Rule 44 (B).]

HIGH COURT OF JUSTICE.—

DIVISION.

Request for payment of money lodged or appropriated against claim, with defence  
denying liability [under Rule 6 or Rule 11 of Order XXII.].

Title of }  
Cause or }  
Matter }  
v. 18 . A. No. .

Ledger credit }  
[In Chancery Division.] } [If same as title of cause, state "As above."]

To the Assistant Paymaster-General.

I hereby notify that the sum of £ paid in in the above action has been accepted by the plaintiff in satisfaction of the claim in respect of which it is paid in, and I declare that due notice has been given of such acceptance thereof. And I request that payment of the said sum may be made to\*

(Signature)

(Address)

(Date) 18 .

\* N.B.—If payment is to be made to the plaintiff's solicitor, the plaintiff must himself sign the request, and insert therein the words "*the solicitor to me, the plaintiff*" (naming such solicitor); but if payment is to be made to the plaintiff in person, the request may be signed either by the plaintiff, who should insert "*me, the plaintiff*," or by the solicitor of the plaintiff, who must insert "*the plaintiff*" (naming him). Payment will be made by a crossed cheque or crossed form of receipt, which must be passed through a bank.



Sup. Court  
Funds Rules,  
1886, App.  
Nos. 14, 15.

## FORM No. 14 (C).

[Certificate as to person entitled to money lodged "as security for costs,"  
referred to in Rule 44 (C).]

HIGH COURT OF JUSTICE.—		DIVISION.	
Title of cause or matter ) in which the money ) was originally lodged }	v.	18 . A.	No.

Ledger credit. [If same as title of cause, state "As above."]

In pursuance of Rule 44 (C) of the Supreme Court Funds Rules, and Rule 27 A of Order XXXI. of the Rules of the Supreme Court, October 1884, I certify that (a) is or are entitled to payment of the total sum of £

(a) Name of person to be paid, and whether as plaintiff or defendant, or as solicitor to plaintiff or defendant.

(b) to a security for costs account under Rule 26 of Order XXXI. of the Rules of the Supreme Court, 1883, viz. :—

On	18	£
On	18	£

Dated this            day of            18 .

(b) Plaintiff or defendant.

(Signature)

(Title of Office)

N.B.—The person applying for payment may be required to produce the receipt of the Bank of England for the lodgment of the amount.

## FORM No. 15.

[Declaration (referred to in Rule 62) to be made by the Widow or next of kin of a person who has died intestate, when letters of administration have not been taken out, and when the total assets of the estate of the deceased have not exceeded the value of £100.]

I (a) solemnly declare that I am the (b) and next or one of the next of kin of (c) deceased, and that I am entitled to take out administration to his estate, and to receive the sum of £            directed to be paid to him by the Order dated            18 .

(a) Name of applicant.  
(b) Degree of relationship.  
(c) Name of deceased.

And I further declare that the total value of the assets of the deceased, including the above sum, does not exceed £100; and I certify that the deathbed and funeral expenses of the deceased have been paid. And I make this solemn declaration conscientiously believing the same to be true.

(Signature of Applicant)

(Address)

Declared before me this            18 ,

Magistrate of	}	or Minister
of		or Commissioner to
Administer Oaths.		

We certify that the person who has signed the above declaration is personally known to us, and that we believe his or her statement to be true.

} To be signed by two householders, resident in the Parish.

I certify that the persons whose signatures are last above subscribed are resident householders in this Parish.

} Minister in the Parish of

# SUPREME COURT (DISTRICT REGISTRY)

## FUNDS RULES, 1887.



I, the Right Honourable Hardinge Stanley Baron Halsbury, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance of the powers contained in "The Court of Chancery Funds Act, 1872," "The Supreme Court of Judicature Act, 1875," "The Supreme Court of Judicature (Funds, &c.) Act, 1883," and of every other power enabling me in that behalf, make the following Rules:—

Sup. Court  
(D. R.)  
Funds Rules,  
1887, rr. 1—5.

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1. These Rules shall come into operation on the first day of October, 1887, and may be cited as the Supreme Court (District Registry) Funds Rules, 1887.

2. Except as is in these Rules otherwise provided, the Supreme Court Funds Rules, 1886, hereinafter called "The Funds Rules, 1886," shall (notwithstanding anything in Rule 111 of those Rules contained) apply to all funds to be lodged in Court in the District Registries of the High Court of Justice in Liverpool and Manchester.

3. The term "Registrar" in the Funds Rules, 1886, shall, for the purpose of these Rules, include the District Registrars of the High Court of Justice in Liverpool and Manchester, and the term "District Registrars" in these Rules means the said District Registrars of the High Court of Justice in Liverpool and Manchester.

4. Lodgments of funds in Court may for the purpose of these Rules, be made at the branch banks of the Bank of England in Liverpool and Manchester, for the account of the Paymaster, and for that purpose the terms "Bank" and "Bank of England (Law Courts Branch)" in the Funds Rules, 1886, include the said branch banks in Liverpool and Manchester.

5. Directions for lodgments under these Rules may be issued by the District Registrars.

Sup. Court  
(D. R.)  
Funds Rules,  
1887, rr. 6—8.

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6. Certificates or notifications of lodgments at the branch banks in Liverpool and Manchester (in Chancery and Admiralty causes and matters) shall be transmitted by the Paymaster to the respective District Registrars, and shall be filed in the District Registries (instead of in the Central Office).

7. All authorities, schedules, certificates, or other documents required to be sent to or left with the Paymaster by the District Registrars, or by any solicitor or other person, or to be sent to the District Registrars or other person by the Paymaster, and all requests or other applications to the Paymaster, may be sent by post.

8. The forms in the appendix to the Funds Rules, 1886, may be used for the purpose of these Rules, with such variations as the circumstances may require.

HALSBURY, C.

August 12, 1887.

We certify that these Rules are made with the concurrence of the Commissioners of Her Majesty's Treasury.

GEORGE J. GOSCHEN.  
SIDNEY HERBERT.



# SUPREME COURT FUNDS RULES, MARCH, 1888.

Sup. Court  
Funds Rules,  
March, 1888.

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I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of Her Majesty's Treasury, do hereby, in pursuance of the powers contained in "The Court of Chancery Funds Act, 1872," "The Supreme Court of Judicature Act, 1875," "The Supreme Court of Judicature (Funds, &c.) Act, 1883," and of every other power enabling me in that behalf, make the following addition to Rule 61 of the Supreme Court Funds Rules, 1886, such addition to take effect from and after the 5th day of March, 1888.

When payments not exceeding £50 per annum are by an order directed to be made to a mother as guardian of her infant children, and such mother marries after the date of the said order, such payments may be made to her, notwithstanding her marriage, on her separate receipt.

The 1st day of March, 1888.

HALSBURY, C.

We certify that this Rule is made with the concurrence of the Commissioners of Her Majesty's Treasury.

SIDNEY HERBERT.  
W. H. WALROND.

Orders under  
Sup. Court  
Funds Act,  
1883.

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## ORDERS UNDER THE SUPREME COURT (FUNDS, &c.) ACT, 1883.

[By the Supreme Court (Funds, &c.) Act, 1883, s. 3, power was given to the Lord Chancellor to direct that all funds in Court in the Queen's Bench, and Probate, Divorce and Admiralty Divisions, should be placed to the credit of the Paymaster-General: and the section provided in effect that all funds so placed should be held by the Paymaster-General in trust to abide the orders of the Court. The two following Orders, which came into operation immediately before the coming into operation of the Rules, completed the operation by which all funds of every kind in the Supreme Court became transferred to one account, and became subject to the Supreme Court Funds Rules.]

I, Roundell Earl of Selborne, Lord High Chancellor of Great Britain, by virtue of the third section of the Supreme Court of Judicature (Funds, &c.) Act, 1883, and all other powers enabling me in that behalf, and with the concurrence of the Treasury, do hereby direct that all moneys in Court, or to be hereafter paid into Court, in the Queen's Bench Division of the High Court of Justice, and all securities in Court placed or to be placed to the credit of any cause, matter, or account in the said Division, shall be transferred, or paid, or placed (as the case may be) to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature; and that this Order shall come into operation immediately after the 29th day of February, 1884.

The 15th day of February, 1884.

(Signed) SELBORNE, C.

We concur in the above order.

(Signed) R. W. DUFF,  
HERBERT J. GLADSTONE,  
Lords Commissioners of Her Majesty's Treasury.

I, Roundell Earl of Selborne, Lord High Chancellor of Great Britain, by virtue of the third section of the Supreme Court of Judicature (Funds, &c.) Act, 1883, and all other powers enabling me in that behalf, and with the concurrence of the Treasury, do hereby direct that all moneys in Court, or to be hereafter paid into Court, in the Probate, Divorce and Admiralty Division of the High Court of Justice, and all securities in Court placed or to be placed to the credit of any cause, matter, or account in the said Division, shall be transferred, or paid, or placed (as the case may be) to the account or credit of the Paymaster-General for and on behalf of the Supreme Court of Judicature; and that this Order shall come into operation immediately after the 29th day of February, 1884.

(Signed) SELBORNE, C.

We concur in the above order.

(Signed) R. W. DUFF,  
HERBERT J. GLADSTONE,  
Lords Commissioners of Her Majesty's Treasury.

# PAY OFFICE REGULATIONS FOR THE INFORMATION OF APPLICANTS.

Pay Office  
Regulations.

[N.B.—*The following Regulations will be subject to variation in exceptional cases.*]

## LODGMENTS IN COURT :—

For Cash, the directions for lodgment will be ready not later than the afternoon of the *day following* the receipt of the schedule or request.

For Securities, the directions for lodgment will be ready the *second day following* the receipt of the schedule or request.

[*Note.*—Lodgment directions may be applied for and sent by post.]

## INVESTMENTS IN SECURITIES :—

Government Securities purchased will be placed to the credit of the suitor's account *four days* after the money is available.

Instructions for the purchase of other Securities will be given to the broker on the *day following* that on which the money is available; and the securities will ordinarily be placed to the credit of the suitor's account in about *four days* afterwards; subject to any unavoidable delay in completing the deeds, or in obtaining the particular security.

[*Note.*—This will not apply to investments of accumulated dividends.]

## SALES OF SECURITIES :—

The proceeds of Government Securities will be placed to the credit of the suitor's account *four days* after the receipt of the request for the sale.

Instructions for the sale of other Securities will be given to the broker on the *day following* the receipt of the request; and the proceeds will ordinarily be placed to the credit of the suitor's account in about *four days* afterwards; subject to any unavoidable delay in completing the deeds, or in effecting the sale.

[*Note.*—Requests for sales may be sent by post.]

## TRANSFER OF SECURITIES OUT OF COURT :—

Transfers of Government Securities will, in ordinary course, be completed at the Bank of England in *four clear days* after the application has been left at the Pay Office.

Directions for the transfer of other Securities will be ready on the *second day following* the delivery in the Pay Office of the completed deed.



Pay Office  
Regulations.

## DELIVERY OF BONDS, BOXES, &amp;c. :—

Directions will be ready on the *second* day after the receipt of the application (or of the schedule).

## DELIVERY OF CHEQUES :—

Cheques for Principal Moneys will, as a rule, be ready *within a week* of the receipt of the schedule or other authority, or of the completion of necessary previous transactions or conditions, if any.

Cheques for dividends on Government Securities will be ready on the usual days for payment of dividends at the Bank of England (subject to possible delay on the occasion of first payments).

Cheques for dividends on other securities will be ready *within a week* after the dividends have been placed to the Pay Office Account at the Bank of England.

The hours of delivery, are as under :—

Except in the long vacation	{	Daily (Saturdays excepted), 10.30 a.m. to 3.30 p.m.
	{	Saturdays, 10.30 a.m. to 2 p.m.
In the long vacation	- {	Daily (Saturdays excepted), 11 a.m. to 3 p.m.
	{	Saturdays, 11 a.m. to 2 p.m.

## REMITTANCES BY POST :—

Cheques sent by post (under rule 48 of the Supreme Court Funds Rules, 1886) will ordinarily be posted on the day on which the written request, (or evidence of life, &c. in the case of periodical payments), is received at the Pay Office; provided the application is correct and complete in form.

## POWERS OF ATTORNEY :—

Will be ready for delivery on the *third* day following that on which they are bespoken. They may be bespoken by a London solicitor, or a London banker, or by the grantor (if duly identified).

All powers for receipt of funds must be prepared in the Pay Office and on the prescribed form. No general powers can be accepted for this purpose.

## CERTIFICATES OF FUNDS :—

Will be ready on the *second* day after they have been bespoken; but merely *re-dated* certificates (when back dated not less than two days) will be ready the day after they have been left.

## NEGATIVE CERTIFICATES :—

Will be ready on the *second* day after that on which they are bespoken, but will always be back-dated four days.

## TRANSCRIPTS OF ACCOUNTS :—

Transcripts of accounts will, in ordinary cases, be completed *within one week* of the day on which they have been applied for; but this period will be liable to extension when the transcript to be completed covers a period of more than two years.

Transcripts required for the use of chief clerks and other officers of the Court will have precedence.

When so requested, the prices at which securities have been purchased or realized will be inserted in the transcripts.

All transcripts of accounts should be left at the Pay Office to be completed at least once in each year (when possible, during the long vacation).

**DORMANT FUNDS** (*i. e.*, funds not dealt with for more than fifteen years):—

Applications for information (with the necessary stamp as below) must be in writing, and must satisfy the conditions of rule 101 of the Funds Rules, 1886.

Applicants should clearly understand that the only information which it is within the power of this department to furnish is,—(1) the amount of a particular fund; (2) the date of any order dealing therewith.

**VERBAL INFORMATION**:—

Verbal information as to funds in Court will not be given, except by special leave of the principal of each branch, or of the paymaster, or deputy paymaster.

**FORMS** can be obtained in rooms Nos. 5, 419, and 420. Deviations from the authorized forms cannot be allowed.

**STAMPS**:—

\*The stamps required on Pay Office documents are as under:

	s.	d.	
Certificate of funds .....	1	0	Impressed on request.
Transcript of account .....	2	0	Impressed on <i>each</i> opening.
Request to pay, lodge, transfer, or deposit in Court, or to pay out funds (except when the lodgment, payment, &c. has been directed by an order) .....	1	0	Impressed on request.
Request for information as to dormant funds .....	2	6	Adhesive or impressed.
Request for other information ....	1	0	Adhesive or impressed.
Office copy of schedule to affidavit under Trustee Relief Act .....	1	0	Impressed on office copy.
Power of Attorney.— <i>Fee for preparation</i> .....	3	0	} Impressed on power.
Power of Attorney.— <i>Revenue stamps</i> :			
For receipt of principal money not exceeding £20, or of periodical payments not exceeding £10 per annum .....	5	0	
For receipt of principal money exceeding £20, or of periodical payments exceeding £10 per annum .....	10	0	

W. HENRY WHITE, *Paymaster*.

1st December, 1886.

\* Fee Stamps are not chargeable in Lunacy cases.

Notice as to  
Unclaimed  
Funds.

## NOTICE

TO PERSONS REQUIRING INFORMATION RESPECTING THE ACCOUNTS OF UNCLAIMED FUNDS IN THE BOOKS OF THE PAY OFFICE OF THE SUPREME COURT.

1. All applications should be in writing, and addressed to—  
The Assistant Paymaster-General,  
Royal Courts of Justice,  
London,  
W.C.

2. The only authorized List of Accounts *that have not been dealt with since 1st September, 1871*, is that published as a supplement to "The London Gazette" of 8th March, 1887, and no reliance should be placed upon any information which is not derived from official sources.

3. Copies of this list can be personally inspected in the eastern corridor, ground floor, at the Royal Courts of Justice, or may be purchased from Messrs. Harrison & Sons, 45, St. Martin's Lane, London, W.C., at the price of 1s. each. Applications for copies to be sent abroad must enclose stamps to cover postage, in addition to the cost of the Gazette, of which the weight is 11 ozs.

4. Each application must be signed by the applicant; if made by a solicitor he must state the name of his client, and that he believes the client to be beneficially interested in the fund. (Rule 101 of Supreme Court Funds Rules, 1886.)

If the application is made by any person other than a solicitor, he must state the grounds upon which he claims to be interested in the particular matter or suit quoted in his application, bearing in mind that the mere fact of the surname of the original owner of property being the same as that of one of the parties to a suit, is not sufficient to support a claim.

5. The correct title of the matter or suit must be quoted from the authorized list, otherwise the account cannot be traced.

6. The published list is only a list of the titles of accounts, and is not, in any sense, either a register of next of kin or of heirs wanted, or of lapsed legacies, or of unclaimed estates.

As the Pay Office is not an office of legal inquiry, and has no knowledge of the origin or particulars of the law suits referred to, it is quite useless to furnish baptismal or other certificates in support of an alleged claim.



7. Each request for information respecting a matter or suit in the list must be stamped with a 2s. 6d. adhesive judicature stamp, as required by the Order as to Supreme Court Fees, 1884, rule 107. Stamps can be obtained at Rooms 6 and 419, Royal Courts of Justice; at the District Registries of the High Court; and at most stamp and post offices.

**Notice as to  
Unclaimed  
Funds.**

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8. The only information which (subject to the conditions herein-before mentioned) it is in the power of the Assistant Paymaster-General to furnish, is—

- (a) The amount of the fund in Court.
- (b) The date of any order of Court affecting the account (if specially required).

9. Funds in Court can only be dealt with under the direction of an order of Court. The Assistant Paymaster-General cannot advise applicants respecting the proper method of applying to the Court for such an order.

10. No notice can be taken of applications unless the foregoing instructions are complied with.

## CHANCERY REGISTRARS' CHAMBERS.

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REGULATIONSCONCERNING THE TRANSMISSION OF SCHEDULES TO  
THE PAYMASTER.

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*SUPREME COURT FUNDS RULES, 1886, r. 24.*

The entering clerks will transmit Schedules direct to the Paymaster immediately after the Order is entered.

For this purpose the entering clerks will keep a book or books in which will be entered the title of each Order and its date, and the book containing these entries will be sent, with the Schedules, to Room No. 106, where the chief of the room then present will sign the book by way of receipt for the Schedules then left.

It will be observed that in no case will a Schedule ever be in the hands of the Solicitor, and, as a fact, the Paymaster will refuse to accept Schedules by any other channel than through the entering clerks. By this means a complete record will be preserved of all Schedules in the hands of the Paymaster.

The Paymaster undertakes the duty of distributing the Schedules among the several divisions of his department.

# CONVERSION ACT (FUNDS) RULES, 1888.

Conversion  
Act (Funds)  
Rules, 1888.

I, the Right Honourable Hardinge Stanley, Baron Halsbury, Lord High Chancellor of Great Britain, with the concurrence of the Lords Commissioners of her Majesty's Treasury, do hereby, in pursuance of the provisions contained in the National Debt (Conversion) Act, 1888, and of every other authority enabling me in that behalf, Order that the following Rules and Regulations as to conversion of stocks standing in the name of her Majesty's Paymaster-General for and on behalf of the Supreme Court of Judicature under the above-named Act, and to other matters relating to such stocks or the dividends thereon be observed.

Rule I.—In the Rules of this Order, and in all Orders of the Court and certificates dealing with or referring to new stock created under the said Act, such new stock shall be sufficiently described by the term "New Consols." And in these Rules the term "Original Stock" shall mean any sum of New Three per cent. stock, Consolidated Three per cent. stock, and Reduced Three per cent. stock, which shall be exchanged for New Consols.

## CONVERSION OF NEW THREE PER CENT. STOCK.

[Rules II. to IX. relate exclusively to the conversion of New Three per cent. stock. As the conversion of this stock has been completely effected, it has not been thought necessary to print these Rules.]

## CONVERSION OF CONSOLS OR REDUCED ANNUITIES.

[Rules X. to XIV. deal with the conversion of consols and reduced annuities. As the time has passed within which the provisions of these Rules had to be complied with, it has not been thought necessary to print them.]

## GENERAL DIRECTIONS.

Rule XV.—The New Consols received in exchange for original stock shall be placed by the Paymaster to the same credit as that to which such original stock was standing, and such New Consols and the dividends thereon including as part of such dividends the consideration money of 5s. for every hundred pounds of stock mentioned in sect. 10 of the said Act, shall, unless otherwise ordered, be dealt with in the same manner as such original stock and the dividends thereon were directed to be dealt with, except that any investment or accumulation shall be made in New Consols. All stop orders, charging orders, powers of attorney, and other documents relating to the original stock or the dividends thereon, shall apply to such New Consols or the dividends thereon.



## CONVERSION ACT (FUNDS) RULES, 1888.

[Conversion  
Act (Funds)  
Rules, 1888,  
rr. xvi.-xxiii.]

Rule XVI.—Where the dividends on New Consols shall be insufficient to make the payments by any order or upon any authority directed to be made out of the dividends on the original stock, the whole of such dividends shall be applied, so far as the same will extend towards making such payments, but without prejudice to any application which may be made under section 20 of the Act, to make up the deficiency out of capital.

Rule XVII.—Where such original stock as is referred to in the last preceding rule has been appropriated to provide an annuity of an amount equal to the dividends thereon, the Paymaster shall, without any order for that purpose, upon a memorandum signed by a Registrar, Master in lunacy, or Chief Clerk, in the Form D in the Schedule hereto, with such alterations as the circumstances may require, sell from time to time so much of any New Consols exchanged therefor, or any other securities in which the original stock may have been re-invested, as, with the dividends thereon, will raise the amount required for any periodical payment of such annuity after deducting the income tax on such dividends.

Rule XVIII.—The Paymaster may signify his assent notwithstanding any stop order or charging order affecting any Consols or reduced annuities, and without the consent of the persons named in such stop order or charging order.

Rule XIX.—No Court fee shall be charged upon any summons, order, certificate, affidavit, or other document or proceeding required for the purpose of giving effect to these rules.

Rule XX.—All provisions in the Supreme Court Fund Rules, 1886, as to the exchange of Government securities and transactions with the National Debt Commissioners shall apply to New Consols.

Rule XXI.—Notwithstanding these rules, the Court or a Judge may, if circumstances shall require, make a special order relating to conversion of any original stock in any cause or matter.

Rule XXII.—In these rules “the Act” means the National Debt (Conversion) Act, 1888; and “Paymaster” means Her Majesty’s Paymaster-General on behalf of the Supreme Court of Judicature. Expressions in these rules have the same meanings as in the Act.

Rule XXIII.—These rule may be cited as the Conversion Act (Funds) Rules, 1888.

29 March, 1888.

HALSBURY, C.

We certify that these rules and regulations are made with the concurrence of the Commissioners of Her Majesty’s Treasury.

SIDNEY HERBERT.  
W. H. WALROND.

## SCHEDULE.

[Forms A., B., and C., in this Schedule relate exclusively to rules dealing with the conversion of stock. They are not printed as being no longer of practical utility.]

## FORM D.

*Short Title of Cause or Matter as in the Order.*  
*Ledger Credit (as in Paymaster’s books).*

£                      New Consols.

The (*describe the old stock*) which have been exchanged for the above-mentioned New Consols having been by the Order dated the                      day of                      appropriated

to provide an annuity of 40*l.* a year for A.B. in the said Order named, by half-yearly payments of 20*l.* as in the said Order mentioned, the Paymaster is directed at the time fixed for each periodical payment of such annuity, to sell so much of the New Consols as, with the dividends then applicable for such payment, will raise such sum of 20*l.* after deducting from such sum the income tax which has been deducted on such dividends, and to pay the amount raised by such sale to the said A.B.

Dated this            day of            1888.

(Signed)

Conversion  
Act (Funds)  
Rules, 1888,  
Schedule.

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MEMORANDUM.—JUDGES' DIRECTIONS TO CHIEF  
CLERKS IN REFERENCE TO RULE XVII.

I. *Service.* (a.) It will be sufficient to serve the summons in the first instance only on the trustees or trustee, executors or executor, or if there is no trustee or executor, or the trustees or trustee, executors or executor cannot, without difficulty or expense be found or ascertained, then on some person interested in the corpus of the fund.

(b.) Where there is a stop order the summons should also be served on the person entitled to the benefit of the order, and the service should be accompanied with a tender of 13*s.* 4*d.*, and an intimation that if he appears it will be at his own risk as to costs.

Directions to  
District  
Registrars  
at Liverpool  
and  
Manchester.

## DIRECTIONS TO DISTRICT REGISTRARS AT LIVERPOOL AND MANCHESTER.

MR. JUSTICE KEKEWICH has issued the following directions to the District Registrars at Liverpool and Manchester.

That the business in Court from the Liverpool and Manchester District Registries be taken before the Judge in London on Saturdays, and that the business be taken in the following order:—

- (1.) Motions.
- (2.) Petitions.
- (3.) Short Causes.
- (4.) Adjourned Summonses.

That the respective District Registrars will be required to attend and act as Registrars in Court on the days on which the business from their respective Registries is to be heard by the Judge.

That all summonses and applications from the Liverpool and Manchester District Registries for hearing before the Judge in Chambers will be taken by the Judge at the rising of the Court at 4 p.m. (or earlier, if necessary) on alternate Friday afternoons. That the District Registrar is to exercise a discretion in referring any particular summonses to the Judge out of the ordinary course.

That a list of all matters to be heard on the Friday and Saturday is to be forwarded on the preceding Wednesday night to the proper officer for insertion in the official printed list prepared for the use of the Court.

That any special *ex parte* motions in a District Registry action or matter made to Mr. Justice Kekewich on any day other than that appointed for taking the business of the District Registry in which such action or matter is proceeding will, if the Judge is of opinion that the same is proper to be heard by him, be heard, and a minute of the order will be taken by the Registrar in attendance for the day and a copy of such minute initialled by such Registrar is to be obtained by the party making the motion, and left with the brief and other papers in the District Registry on bespeaking the order.

That leave to serve notice of motion under Order LII., rule 9, may be granted by the District Registrars in their capacities as Chief Clerks, but such leave is not to be granted unless they are satisfied that there are good grounds and reasons for granting same.

That all proceedings in Chancery actions or matters are to be entered of record in the District Registries as the same are now entered by the entry clerk in London.

That cause books should be kept in the District Registries containing a list of causes, petitions, and adjourned summonses set down in the District Registry for hearing before the Judge and such cause books are to be open to public inspection.



That no appeal summonses are to be issued in Chancery matters proceeding in the District Registries, but that the parties have a right to go before the Judge in person in London, if they so apply at the time when the summons is heard by the District Registrar, or ask for an adjournment or for time for the purpose of considering whether an adjournment to the Judge shall be asked for.

That the personal attendance of the District Registrars will be required in London whenever any District Registry action whether with or without witnesses is being tried before Mr. Justice Kekewich there.

The District Registrars may make orders for foreclosure and sale in all cases of simple mortgage transactions where the common order for foreclosure or sale is applicable.

The District Registrars may make orders for a receiver where the parties consent, but not in hostile cases, nor (except in an extreme case) where the defendant is an executor or trustee.

The District Registrars may make orders under Order XV. Rule 1, for accounts where there is no preliminary question to be tried, and where the order is not for general administration. If the case is one of partnership and the partnership is admitted, then the question of the shares of partners is not a preliminary question. And generally if in any case the account must necessarily be required sooner or later, then the District Registrars should make the order. If, however, the partnership or the right to have an account is disputed, then the District Registrars should not make an order.

On an application against a solicitor for delivery and taxation of bill of costs and delivery up of deeds, the District Registrars should hear the application, complete the evidence and then refer it to the Judge.

Recognizances are to be taken in the names of the two District Registrars.

Applications for the appointment of trustees under the Settled Land Acts may be disposed of by the Registrars without reference to the Judge where the case is of the ordinary character, that is, is in no wise peculiar and everything is apparently straightforward. But the Registrars will be careful to see that the persons proposed to be appointed trustees are such as regards their positions in life and their relations towards the tenant for life and each other that they may be expected to be reasonably independent of the tenant for life's influence and to do their duty towards the remaindermen. Where the case is in any respects peculiar, the application should be adjourned to the Judge, or if the peculiarity or difficulty is slight the Registrar should take an opportunity of mentioning the case to the Judge before making an order. Where trustees are required to act on behalf of an infant under sections 59 and 60 of the Settled Land Act, 1882, or otherwise to discharge duties involving the protection of infants, unborn persons, or others who cannot be brought before the Court the summons should be referred to the Judge, and he will require to be fully informed of all the circumstances of the case.

## RULES UNDER THE ACT FOR THE ABOLITION OF FINES AND RECOVERIES, AND SECTION SEVEN OF THE CONVEYANCING ACT, 1882.

1. No person authorised or appointed under the Act 3 & 4 Will. IV. c. 74 (in these Rules referred to as the Fines and Recoveries Act) to take the acknowledgments of deeds by married women shall take any such acknowledgment if he is interested or concerned either as a party or as solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the acknowledgment.

2. Before a Commissioner shall receive an acknowledgment, he shall inquire of the married woman separately and apart from her husband and from the solicitor concerned in the transaction whether she intends to give up her interest in the estate to be passed by the deed without having any provision made for her; and where the married woman answers in the affirmative and the Commissioner shall have no reason to doubt the truth of her answer, he shall proceed to receive the acknowledgment; but if it shall appear to him that it is intended that provision is to be made for the married woman, then the Commissioner shall not take her acknowledgment until he is satisfied that such provision has been actually made by some deed or writing produced to him; or if such provision shall not have been actually made before, then the Commissioner shall require the terms of the intended provision to be shortly reduced into writing, and shall verify the same by his signature in the margin, at the foot, or at the back thereof.

3. The memorandum to be indorsed on or written at the foot or in the margin of a deed acknowledged by a married woman shall be in the following form in lieu of the form set forth in section 84 of the Fines and Recoveries Act:

“This deed was this day produced before me and acknowledged by therein named to be her act and deed [*or their* several acts and deeds] previous to which acknowledgment [*or* acknowledgments] the said was [*or were*] examined by me separately and apart from her husband [*or their* respective husbands] touching her [*or their*] knowledge of the contents of the said deed and her [*or their*] consent thereto and [*each of them*] declared the same to be freely and voluntarily executed by her.”

4. When an acknowledgment is taken by any person other than a judge, the following declaration shall be added to the memorandum of acknowledgment:

“And I declare that I am not interested or concerned either as a party or as a solicitor or clerk to the solicitor for one of the parties or otherwise in the transaction giving occasion for the said acknowledgment.”

5. A memorandum of acknowledgment purporting to be signed according to any of the following forms shall be deemed to be a

memorandum purporting to be signed by a person authorised to take the acknowledgment :—

Act 1882,  
s. 7.  
Rules.

(Signed) A.B.

A Judge of the High Court of Justice in England,  
or A Judge of the County Court of ,  
or A perpetual Commissioner for taking acknowledgments of deeds by married women,  
or The special Commissioner appointed to take the aforesaid acknowledgment.

But this rule is not to derogate from the effect of any memorandum purporting to be signed by a person authorised to take the acknowledgment, though not signed in accordance with any of the above forms.

6. Nothing in the five preceding rules contained shall make invalid any acknowledgment which would have been valid if these rules had not been enacted.

7. Every Commission appointing a special Commissioner to take an acknowledgment by a married woman shall be returned to the office of the registrar of certificates of acknowledgments of deeds by married women, and shall be there filed. An index shall be prepared and kept in the said office, giving the names and addresses of the married women named in all such commissions filed in the said office after the 31st December, 1882. The same rules shall apply to searches in the index so to be prepared as to searches in the other indexes and registers kept in the Central Office.

8. The costs to be allowed to solicitors in respect of the matters hereinafter mentioned, when not otherwise regulated by the general orders in force for the time being under the Solicitors Remuneration Act, 1881, or by special agreement, shall be as follows ; anything in the Rules of the Supreme Court as to costs, dated the 12th August, 1875, to the contrary notwithstanding :—

*Charges under the Act 3 & 4 Will. IV. c. 74.*

*(The Fines and Recoveries Act.)*

£ s. d.

For the indorsement on deeds required by the Fines and Recoveries Act, to be entered on the Court Rolls of Manors of the memorandum of production and memorandum of entry on Court Rolls to be signed by the Lord Steward or Deputy Steward, each indorsement of memorandum 5s., together .....	0	10	0
For the entries on the Court Rolls of deeds and the indorsements thereon, at per folio of 72 words .....	0	0	6
For taking the consent of each protector of settlement of lands .....	0	13	4
For taking the surrender by each tenant in tail of lands	0	13	4
For entries of such surrenders or the memorandums thereof in the Court Rolls, at per folio of 72 words .....	0	0	6



**Act 1882,  
s. 7.  
Rules.**

9. The following Rules and Orders are hereby repealed, except as to certificates not lodged before the 1st January, 1883, of acknowledgments by married women of deeds executed before the 1st January, 1883, and the affidavits relating thereto :—

The General Rules of the Court of Common Pleas, Hil. Term, 1834.

The General Rules of the Court of Common Pleas, Trin. Term, 1834.

The General Order of the Court of Common Pleas, dated the 24th November, 1862.

The General Order of the Court of Common Pleas, dated the 13th January, 1863.

10. These Rules shall take effect from and after the 31st December, 1882.

**Act 1882,  
s. 2.  
Rules.**

## RULES UNDER SECTION 2 OF THE CONVEYANCING ACT, 1882.

1. Every requisition for an official search shall state the name and address of the person requiring the search to be made. Every requisition and certificate shall be filed in the office where the search was made.

2. Every person requiring an official search to be made pursuant to section 2 of the Conveyancing Act, 1882, shall deliver to the officer a declaration according to the Forms 1 and 2, in the Appendix, purporting to be signed by the person requiring the search to be made, or by a solicitor, which declaration may be accepted by the officer as sufficient evidence that the search is required for the purposes of the said section. The declaration may be made in the requisition, or in a separate document.

3. Requisitions for searches under section 2 of the Conveyancing Act, 1882, shall be in the Forms 3 to 6 in the Appendix, and the certificates of the results of such searches shall be in the Forms 7 to 10, with such modifications as the circumstances may require.

4. Where a certificate setting forth the result of a search in any name has been issued, and it is desired that the search be continued in that name, to a date not more than one calendar month subsequent to the date of the certificate, a requisition in writing in the Form 11 in the Appendix may be left with the proper officer, who shall cause the search to be continued, and the result of the continued search shall be endorsed on the original certificate and upon any office copy thereof which may have been issued, if produced to the officer for that purpose. The endorsement shall be in the Form 12 in the Appendix with such modifications as circumstances require.

5. Every person shall upon payment of the prescribed fee be entitled to have a copy of the whole or any part of any deed or document enrolled in the Enrolment Department of the Central Office.

Act 1882,  
s. 2.  
Rules.

RULE UNDER THE CONVEYANCING AND LAW OF  
PROPERTY ACT, 1881.

Act 1881.  
Rule.

6. An alphabetical index of the names of the grantors of all powers of attorney filed under section 48 of the Conveyancing and Law of Property Act, 1881, shall be prepared and kept by the proper officer, and any person may search the index upon payment of the prescribed fee. No person shall take copies of or extracts from any power of attorney or other document filed under that section and produced for his inspection. All copies or extracts which may be required shall be made by the Office.

(Signed) SELBORNE, C.  
COLERIDGE, L.C.J.  
G. JESSEL, M.R.  
NATH. LINDLEY, L.J.  
H. MANISTY, J.  
EDW. FRY, J.

APPENDIX.

Act 1882,  
Appendix.

FORM 1.

Supreme Court of Judicature,  
Central Office.

To the Clerk of Enrolments,  
or The Registrar of  
Royal Courts of Justice,  
London.

Declaration  
by separate  
instrument as  
to purposes of  
search.

In the matter of *A.B.* and *C.D.*

I declare that the search [*or searches*] in the name [*or names*] of  
required to be made by the requisition for search, dated the is  
[*or are*] required for the purposes of a sale [*or mortgage, or lease, or as the case*  
*may be*], by *A.B.* to *C.D.*

Signature, }  
Address, and }  
Description. }

Dated

FORM 2.

I declare that the above-mentioned search is required for the purposes of a sale  
[*or mortgage, or lease, or as the case may be*], by *A.B.* to *C.D.*

Declaration  
as to purposes  
of search con-  
tained in the  
requisition.

## FORMS—CONVEYANCING ACT, 1882.

**Act 1882,  
Appendix.**

## FORM 3.

Requisition  
for search in  
the Enrolment  
Office under  
the Convey-  
ancing Act,  
1882, s. 2.

Supreme Court of Judicature,  
Central Office.

Requisition for Search.

To the Clerk of Enrolments,  
Royal Courts of Justice,  
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for deeds and  
other documents enrolled during the period from 18 to 18  
both inclusive, in the following name [*or names*].

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

[*Add declaration, Form 2.*]

[*State if an office copy of the certificate is desired, and whether it is to be sent by  
post or called for.*]

Signature, address, and  
description of person  
requiring the search. }

Dated

## FORM 4.

Requisition  
for search in  
the Bills of  
Sale Depart-  
ment under  
the Convey-  
ancing Act,  
1882, s. 2.

Supreme Court of Judicature,  
Central Office.

Requisition for Search.

To the Registrar of Bills of Sale,  
Royal Courts of Justice,  
London.

In the matter of *A.B.* and *C.D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for instruments  
registered or re-registered as bills of sale during the period from 18  
to 18 both inclusive, in the following name [*or names*].

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.



[Add declaration, Form 2.]

[State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.]

Act 1892,  
Appendix.

Signature, address, and }  
description of person }  
requiring the search. }

Dated

FORM 5.

Supreme Court of Judicature,  
Central Office.

Requisition for Search.

To the Registrar of Certificates of Acknowledgments of Deeds by Married  
Women,  
Royal Courts of Justice,  
London.

In the matter of *A. B. and C. D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for certificates of acknowledgments of deeds by married women during the period from 18 to 18 both inclusive, according to the particulars mentioned in the schedule hereto.

Requisition for search in the Registry of certificates of acknowledgments of deeds by married women under the Conveyancing Act, 1882, s. 2.

THE SCHEDULE.

Surname.	Christian Name or Names of Wife and Husband.	Date of Certificate if the Search relates to a particular Certificate.	Date of Deed, if the search relates to a particular Deed.	County, Parish, or Place in which the Property is situate, or other description of the Property.

[Add declaration, Form 2.]

[State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.]

Signature, address, and }  
description of person }  
requiring the search. }

Dated

FORMS—CONVEYANCING ACT, 1882.

Act 1882,  
Appendix.

Requisition  
for search in  
the registry  
of judgments  
under the  
Conveyancing  
Act, 1882,  
s. 2.

FORM 6.

Supreme Court of Judicature,  
Central Office.  
Requisition for Search.  
To the Registrar of Judgments,  
Royal Courts of Justice,  
London.

In the matter of *A. B. and C. D.*

Pursuant to section 2 of the Conveyancing Act, 1882, search for judgments, revivals, decrees, orders, rules, and *lis pendens*, and for judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for the period from 18 to 18, both inclusive, and for executions for the period from the 29th July, 1864 [*or as the case may require*], to the 18, both inclusive, and for annuities for the period from the 26th April, 1855 [*or as the case may require*] to the 18, both inclusive, in the following name [*or names*].

Surname.	Christian Name or Names.	Usual or last known Place of Abode.	Title, Trade, or Profession.

[*Add declaration, Form 2.*]  
[*State if an office copy of the certificate is desired, and whether it is to be sent by post or called for.*]

Signature, address, and  
description of person }  
requiring the search.  
Dated

FORM 7.

Certificate of  
search by  
Enrolment  
Department  
under the  
Conveyancing  
Act, 1882,  
s. 2.

Supreme Court of Judicature,  
Central Office,  
Enrolment Department.  
Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the matter of *A. B. and C. D.*  
This is to certify that a search has been diligently made in the Enrolment Office for deeds and other documents in the name [*or names*] of for the period from to, both inclusive, and that no deed or other document has been enrolled in the said office in that name [*or in any one or more of those names*] during the period aforesaid, or and that except the described in the schedule hereto no deed or document has been enrolled in that name [*or in any one or more of those names*] during the period aforesaid.

THE SCHEDULE.

Dated .

## FORM 8.

Supreme Court of Judicature,  
Central Office,  
Bills of Sale Department.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the Matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Register of Bills of Sale in the name [or names] of \_\_\_\_\_ for the period from \_\_\_\_\_ 18\_\_\_\_ to \_\_\_\_\_ 18\_\_\_\_ both inclusive, and that no instrument has been registered or re-registered as a bill of sale in that name [or in any one or more of those names] during that period, \_\_\_\_\_ or, and that except the \_\_\_\_\_ described in the schedule hereto, no instrument has been registered or re-registered as a bill of sale in that name [or in any one or more of those names] during the period aforesaid.

### THE SCHEDULE.

Dated \_\_\_\_\_

Act 1882,  
Appendix.

Certificate of  
search by the  
Registrar of  
Bills of Sale  
under the  
Conveyancing  
Act, 1882.

## FORM 9.

Supreme Court of Judicature,  
Central Office.

### Registry of Certificates of Acknowledgments of Deeds by Married Women.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.

In the Matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Office of the Registrar of Certificates of Acknowledgments of Deeds by Married Women in the name [or names] of \_\_\_\_\_ for the period from \_\_\_\_\_ to \_\_\_\_\_, 18\_\_\_\_, both inclusive, \_\_\_\_\_ for a certificate dated the \_\_\_\_\_ or for certificates of acknowledgment of a deed dated the \_\_\_\_\_ or for certificates of acknowledgments of deeds relating to [fill in the description of the property from the Requisition] and that no such certificate has been filed in that name [or in any one or more of those names] during the period aforesaid. or and that except the certificate [or certificates] described in the schedule hereto, no such certificate has been filed in that name [or in any one or more of those names] during the period aforesaid.

Certificate of  
search by  
Registrar of  
certificates of  
acknowledg-  
ments of deeds  
by married  
women under  
the Convey-  
ancing Act,  
1882, s. 2.

Surname.	Christian Names of Wife and Husband.	Date of Certi- ficate.	Date of Deed.	County, Parish, or Place in which Property situated, or other descrip- tion of the Property.

Dated            day of            188 .



## FORMS—CONVEYANCING ACT, 1882.

Act 1882,  
Appendix.

## FORM 10.

Certificate of  
search by  
Registrar of  
judgments  
under Con-  
veyancing  
Act, 1882,  
s. 2.

Supreme Court of Judicature,

Central Office.

The Registry of Judgments.

Certificate of Search pursuant to Section 2 of the Conveyancing Act, 1882.  
In the Matter of *A. B.* and *C. D.*

This is to certify that a search has been diligently made in the Office of the Registrar of Judgments for judgments, revivals, decrees, orders, rules, *lis pendens*, judgments at the suit of the Crown, statutes, recognizances, Crown bonds, inquisitions, and acceptances of office for the period from , 18 , to , 18 , both inclusive, and for executions for the period from , 18 , to , 18 , both inclusive, and for annuities for the period from , 18 , to , 18 , both inclusive, in the name [or names] of and that no judgment, revival, decree, order, rule, *lis pendens*, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name [or in any one or more of those names] during the respective periods covered by the aforesaid searches.

or and that except the mentioned in the schedule hereto no judgment, revival, decree, order, rule, *lis pendens*, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution, or annuity has been registered or re-registered in that name [or in any one or more of those names] during the respective periods covered by the aforesaid search.

## THE SCHEDULE.

Dated the                      day of                      , 188 .

## FORM 11.

Requisition  
for continu-  
ation of search  
under the  
Conveyancing  
Act, 1882.

Supreme Court of Judicature,

Central Office.

Requisition for continuation of Search.

To the Clerk of Enrolments  
or The Registrar of

Royal Courts of Justice,  
London, W.C.

In the matter of *A. B.* and *C. D.*

Pursuant to section 2 of the Conveyancing Act, 1882, continue the search for [ ], made pursuant to the requisition dated the                      day of                      , 18 , in the name [or names] of                      , from the                      day of                      to                      the                      day of                      , 18 , both inclusive.

Signature, address, and )  
description of person )  
requiring the search. )

Dated                      .

## FORM 12.

Certificate  
of result of  
continued  
search under  
the Convey-  
ancing Act,  
1882, s. 2, to  
be indorsed on  
original certi-  
ficate.

This is to certify that the search [or searches] mentioned in the within-written certificate has [or have] been diligently continued to the                      day of                      , 18 , and that up to and including that date [except the                      mentioned in the schedule hereto (*these words to be omitted where nothing is found*)], no deed or other document has been enrolled, or no instrument has been registered, or re-registered, as a bill of sale, or no certificate has been filed, or no judgment, revival, decree, order, rule, *lis pendens*, judgment at the suit of the Crown, statute, recognizance, Crown bond, inquisition, acceptance of office, execution or annuity, has been registered or re-registered in the within-mentioned name [or in any one or more of the within-mentioned names].

Dated                      .

# RULES OF THE SUPREME COURT

UNDER

## BILLS OF SALES ACTS, 1878 AND 1882.

1. These Rules may be cited as "The Rules of the Supreme Court, Bills of Sale Acts, 1878 and 1882," and shall stand in lieu of "The Rules of the Supreme Court, December 1882," which shall be and are hereby annulled.
 

**Rules under  
Bills of Sales  
Acts,  
rr. 1—7.**
2. These Rules shall come into operation on the 1st January 1884.
3. The abstract of the contents of a Bill of Sale, required by the Bills of Sale Act (1878) Amendment Act, 1882, to be transmitted to the Registrar of a County Court, shall be in the form given in the Appendix hereto.
 

**Abstract.**
4. The abstract shall be sealed with the seal of the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, and dated on the day on which it is transmitted by post to the Registrar of the County Court named therein.
 

**Abstract to be  
sealed and  
dated.**
5. Where a Bill of Sale has been re-registered since the 31st October 1882, or shall be re-registered hereafter under section eleven of the Bills of Sale Act, 1878, an abstract of the re-registration, sealed and dated, shall be transmitted by post to the Registrar of the County Court to which such abstract should have been transmitted had the Bill of Sale been registered under the Bills of Sale Act (1878) Amendment Act, 1882.
 

**Abstract of  
re-registered  
bills of sale.**
6. Where a memorandum of satisfaction has been or shall be written under section fifteen of the Bills of Sale Act, 1878, upon any registered or re-registered copy of a Bill of Sale, an abstract of which has been transmitted to any Registrar of a County Court, a notice of such satisfaction, in the form in the Appendix hereto, duly sealed and dated, shall be transmitted to each of the Registrars to whom an abstract of such Bill of Sale shall have been transmitted.
 

**Notice of a  
satisfaction of  
a bill of sale  
to be trans-  
mitted to local  
registry.**
7. The Registrar shall number the abstracts and notices of satisfaction in the order in which they shall respectively be received by him, and shall file and keep them in his office.
 

**Abstracts to  
be numbered  
and filed.**

**Rules under  
Bills of Sales  
Acts,  
rr. 8—12.**

Index, how to  
be kept.

Satisfaction  
to be noted in  
index.

Search and  
inspection of  
abstract.

Office copy of  
abstract.

Authority to  
take oaths.

8. The Registrar shall keep an index, alphabetically arranged, in which he shall enter under the first letters of the surname of the mortgagor or assignor such surname with his Christian name or names, address, and description, and the number which has been affixed to the abstract.

9. Upon the receipt of a notice of satisfaction the Registrar shall enter the notice of satisfaction on the abstract of the Bill to which it relates, and shall note in the index against the name of the mortgagor or assignor the fact of the satisfaction having been entered.

10. The registrar shall allow any person to search the index at any time during which he is required by the County Court Rules for the time being to keep his office open, upon payment by such person of one shilling; and to make extracts from the abstract or notice of satisfaction upon payment of one shilling for each abstract or notice of satisfaction inspected.

11. The Registrar shall also, if required, cause an office copy to be made of any abstract or notice of satisfaction, and shall be entitled for making, marking, and sealing the same to the same fee as is payable in the Bills of Sale Department of the Central Office of the Supreme Court of Judicature, viz., sixpence per folio.

12. Every first and second class clerk in the Bills of Sale Department of the Central Office of the Supreme Court of Judicature shall, by virtue of his office, have authority to take oaths and affidavits in matters relating to that department.

(Signed) SELBORNE, C.  
COLERIDGE, C.J.  
N. LINDLEY, L.J.  
EDW. FRY, L.J.  
C. E. POLLOCK, B.  
H. MANISTY, J.

28th December 1883.



# APPENDIX.

No. 1.

## ABSTRACT.

### LOCAL REGISTRATION OF BILLS OF SALE.

Satisfaction entered.	No.	Mortgagor or Assignor.	Residence and Occupation.	Mortgagee or Assignee.	Nature of Instrument and Consideration.	Nature of Property assigned.	Amount Secured, and how Repayable.	Rate of Interest.	Date of Instrument.	Date of Registration.	Date of Filing Affidavit of Renewal.
									188	188	188

To the Registrar of the County Court of

Holden at

Sent on the

day of

1883.

L.S.

Rules under  
Bills of Sales  
Acts,  
Appendix.

## RULES UNDER BILLS OF SALES ACTS.

Rules under  
Bills of Sales  
Acts,  
Appendix.

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No. 2.

## NOTICE OF SATISFACTION.

Bills of Sale Registry,  
Royal Courts of Justice,  
London.

to 18 .

Registered [*or re-registered*] 18 .

Abstract transmitted 18 .

Satisfaction entered 18 .

## TAKE NOTICE THAT—

A memorandum of satisfaction to the above Bill of Sale was entered on the Register on the above date.

(Signed)

L.S.

To the Registrar of the County Court of *holden at* .

Sent on the      day of

## ORDER IN COUNCIL AS TO DISTRICT REGISTRIES.

—◆—

AT THE COURT AT OSBORNE HOUSE, ISLE OF WIGHT, THE 12TH DAY  
OF AUGUST, 1875.

12th Aug.  
1875.

---

PRESENT :

THE QUEEN'S MOST EXCELLENT MAJESTY IN COUNCIL.

WHEREAS by "The Supreme Court of Judicature Act, 1873," it is enacted that it shall be lawful for Her Majesty, by Order in Council, from time to time to direct that there shall be District Registrars in such places as shall be in such Order mentioned for districts to be thereby defined, from which writs of summons for the commencement of actions in the High Court of Justice may be issued, and in which such proceedings may be taken and recorded as are hereinafter mentioned; and Her Majesty may thereby appoint that any registrar of any County Court, or any Registrar or Prothonotary or District Prothonotary of any local Court whose jurisdiction is hereby transferred to the said High Court of Justice, or from which an appeal is hereby given to the said Court of Appeal, or any person who, having been a District Registrar of the Court of Probate, or of the Admiralty Court, shall under this Act become and be a District Registrar of the said High Court of Justice, or who shall hereafter be appointed such District Registrar, shall and may be a District Registrar of the said High Court for the purpose of issuing such writs as aforesaid, and having such proceedings taken before him as are hereinafter mentioned :

See S. C. Jud. Act, 1873. s. 60, *ante*, p. 48.

And whereas by "The Supreme Court of Judicature Act, 1875," it is provided that where any such Order has been made, two persons may, if required, be appointed to perform the duties of District Registrar in any district named in the Order : and such persons shall be deemed to be joint District Registrars, and shall



12th Aug.  
1875.

perform the said duties in such manner as may from time to time be directed by the said Order, or any Order in Council amending the same :

See S. C. Jud. Act, 1875, s. 13, *ante*, p. 73.

And whereas it has seemed fit to Her Majesty, by and with the advice of Her Privy Council, that there should be District Registrars in certain places in England : Now, therefore, Her Majesty, by and with the advice aforesaid, is pleased to order, and it is hereby ordered, as follows :—

That there shall be District Registrars in the places of Liverpool, Manchester, and Preston, and the District Registrar at Liverpool of the High Court of Admiralty, and the District Prothonotary at Liverpool of the Court of Common Pleas at Lancaster shall be and are hereby appointed the District Registrars in Liverpool ; and the District Prothonotary at Manchester of the said Court of Common Pleas shall be and is hereby appointed the District Registrar in Manchester ; and the District Prothonotary at Preston of the said Court of Common Pleas shall be and is hereby appointed the District Registrar in Preston ; and that the district for each such place shall be the district now assigned to each such District Prothonotary, under the provisions and authority of “The Common Pleas at Lancaster Amendment Act, 1869.”

That there shall be a District Registrar in Durham, and that the District Prothonotary of the Court of Pleas at Durham shall be and is hereby appointed the District Registrar in Durham ; and that the district shall be the district, for the time being, of the County Court holden at Durham.

That, in the places mentioned in the Schedule annexed, there shall be District Registrars, and that the Registrar of the County Court held in any such place shall be and is hereby appointed the District Registrar in such place, and that the district for each such place shall be the district, for the time being, of the County Court holden at such place.

C. L. PEEL.

## SCHEDULE TO THE FOREGOING ORDER.

Schedule.

Bangor.	Kingston-on-Hull.
Barnsley.	King's Lynn.
Barnstaple.	Leeds.
Bedford.	Leicester.
Birkenhead.	Lincoln.
Birmingham.	Lowestoft.
Boston.	Maidstone.
Bradford.	Newcastle-upon-Tyne.
Bridgewater.	Newport, Monmouth.
Brighton.	Newport, Isle of Wight.
Bristol.	Newtown.
Bury St. Edmunds.	Northampton.
Cambridge.	Norwich.
Cardiff.	Nottingham.
Carlisle.	Oxford.
Carmarthen.	Pembroke Docks.
Cheltenham.	Peterborough.
Chester.	Poole.
Colchester.	Portsmouth.
Derby.	Ramsgate.
Dewsbury.	Rochester.
Dover.	Sheffield.
Dorchester.	Shrewsbury.
Dudley.	Southampton.
East Stonehouse.	Stockton-on-Tees.
Exeter.	Sunderland.
Gloucester.	Swansea.
Great Grimsby.	Truro.
Great Yarmouth.	Totnes.
Halifax.	Wakefield.
Hanley.	Walsall.
Hartlepool.	Whitehaven.
Hereford.	Wolverhampton.
Huddersfield.	Worcester.
Ipswich.	York.

By Order in Council, dated August 11th, 1884, it was ordered that there should be District Registrars in the following places:—

Aberystwith,  
Carnarvon,  
Winchester.

# APPEALS TO THE HOUSE OF LORDS.

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## PROCEDURE AND PRACTICE.

*Provisions of App. Jur. Act, 1876.*—The procedure to be followed in House of Lords Appeals is determined by ss. 4 and 11 of the Appellate Jurisdiction Act, 1876. Those sections run:—

S. 4. Every appeal shall be brought by way of petition to the House of Lords, praying that the matter of the order or judgment appealed against may be reviewed before Her Majesty the Queen in her Court of Parliament, in order that the said Court may determine what of right, and according to the law and custom of this realm, ought to be done in the subject-matter of such appeal.

S. 11. After the commencement of this Act error shall not lie to the House of Lords, and an appeal shall not lie from any of the Courts from which an appeal to the House of Lords is given by this Act, except in manner provided by this Act, and subject to such conditions as to the value of the subject-matter in dispute, and as to giving security for costs, and as to the time within which the appeal shall be brought, and generally as to all matters of practice and procedure, or otherwise, as may be imposed by orders of the House of Lords.

*Stay of proceedings.*—An application to stay proceedings or execution pending an appeal to the House of Lords must be made to the Court of Appeal and not to the High Court: *The Khedive*, 5 P. D. 1; *Hamill v. Lilley*, 19 Q. B. D. 83. As to when a stay will be granted, see *Grant v. Banque Franco-Egyptienne*, 3 C. P. D. 202; *Wilson v. Church*, 12 Ch. D. 454; *Polini v. Gray*, 12 Ch. D. 438.

The C. A. will not, as a general rule, stay the trial of the issues of fact pending an appeal to the House of Lords on a point of law: *Re Palmer*, 52 L. J. Ch. 224.

*Evidence.*—The House of Lords will not admit evidence which was not presented to the Court below: *Banco de Portugal v. Waddell*, 5 App. Cas. 161.

*Judgment of H. L.*—As to making a judgment of the House of Lords an order of the High Court, see *British Dynamite Co. v. Krebs*, 11 Ch. D. 448. As to varying the details of an order of the House of Lords, see *Yates v. University College, London*, 7 H. L. 438.

*Reinstatement of case.*—A case in the House of Lords dismissed by default can only be reinstated in the list by special application to the House of Lords. The High Court has no jurisdiction in the matter of a particular issue disposed of by the rules of the House of Lords, although the original cause of action may still be within the jurisdiction of the High Court: *Mercier v. Williams*, 32 W. R. 152.

*Costs.*—As to costs when the judgment or order appealed from is reversed or varied, see *De Vitre v. Betts*, 6 H. L. 319, at p. 323, and *Elliot v. Lord Rokeby*, 7 App. Cas. 46. As to costs when the judgment below is affirmed because the votes of the House are equally divided, see *Pryce v. Monmouthshire Ry. Co.*, 4 App. Cas. 197. As to interest on costs, see *Lancashire and Yorkshire Ry. v. Gidlow*, 7 H. L. 517.

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APPELLATE JURISDICTION ACT, 1876.

FORM OF APPEAL, METHOD OF PROCEDURE, AND  
STANDING ORDERS,

Form of  
Appeal.

APPLICABLE TO ALL APPEALS PRESENTED TO THE HOUSE OF LORDS  
ON AND AFTER THE 1ST DAY OF NOVEMBER 1876.

To the Right Honourable the House of Lords.

The Humble Petition and Appeal of *A.* (*set forth the Address  
of the Appellant*).

Form of Ap-  
peal (Standing  
Order No. I.).

Your Petitioner humbly prays that the matter of the Order (*or  
Orders, or Judgment, or Interlocutor,*) set forth in the  
Schedule hereto\* (*or, so far as therein stated to be ap-  
pealed against*) may be reviewed before Her Majesty the  
Queen in Her Court of Parliament, and that the said  
Order (*or so far as aforesaid*) may be reversed, varied, or  
altered, or that the Petitioner may have such other relief  
(*if specific relief be desired it can be so stated in the prayer*)  
in the premises as to Her Majesty the Queen, in Her  
Court of Parliament, may seem meet; and that (*here name  
the Respondents*) mentioned in the Schedule to the appeal  
may be ordered to lodge such printed Case† as they may  
be advised, and the circumstances of the Cause may re-  
quire, in answer to this Appeal; and that service of such  
Order on the Solicitors in the Cause of the said Respon-  
dents may be deemed good service.

\* *Note.*—The  
schedule must  
set out the title  
of, and parties  
to the cause or  
matter: and  
the decrees,  
orders, judg-  
ments, or in-  
terlocutors ap-  
pealed against,  
and where the  
appeal is not  
against the  
whole decree  
the part ap-  
pealed against  
must be de-  
fined.

To be signed by two Counsel.‡

Standing  
Order No. II.  
(Signature of  
Counsel).

(*Here insert Schedule.*)

† See directions in paragraph 29 as to lodgment of Respondent's case *or  
separate cases.*

‡ In the event of the Autograph signatures not being subscribed to the  
*parchment* Appeal, the draft containing them must be shown to the Clerks of the  
Judicial Department at the time of lodging the Appeal.

**Form of  
Schedule.**

## FORM OF SCHEDULE.

“ From Her Majesty’s Court of Appeal (*England*).

“ In a certain Cause (*or Matter*) wherein *A.* was Plaintiff and *B.* was Defendant. (*The names of all parties to the Appeal, whether original Plaintiffs or Defendants in the Cause, or added by subsequent Orders, must be here set forth.*)

“ The Order of (*state Court and date of Order*) appealed from is in the words following, viz., (*set forth, in italics throughout the whole of the Order appealed from\**) (*or, when the Order is appealed from in part only,*) The Order of (*state Court and date of Order*) referred to in the above prayer is in the words following, the portion complained of being printed in italics (*set forth Order, the portion complained of being printed in italics, the portion not complained of being printed in Roman type*).”<sup>\*</sup>

We humbly conceive this to be a proper Case to be heard before your Lordships by way of Appeal.

*To be signed by two Counsel.†*

I, \_\_\_\_\_, Clerk to Messrs. \_\_\_\_\_, of \_\_\_\_\_, Solicitors for the Appellants within named, hereby certify that on the day of \_\_\_\_\_ I served Messrs. \_\_\_\_\_ of \_\_\_\_\_ Solicitors for \_\_\_\_\_, the within-named Respondents, with a correct Copy of the foregoing Appeal, and with a notice that on the day of \_\_\_\_\_ or as soon after as conveniently may be, the Petition of Appeal would be presented to the House of Lords on behalf of the Appellant.

## DIRECTIONS FOR AGENTS.

N.B.—*All Documents must be lodged in the Parliament Office before three o’clock on the day of presentation.*

**Method of  
Procedure.**

## METHOD OF PROCEDURE.

1. The appeal must be printed on parchment (*quarto size*).
2. Two clear days’ notice of the intention to present the appeal, together with a correct copy of the appeal,‡ must be served on the respondents or their solicitors prior to presentation, and a certificate of such service entered on the appeal as above.
3. The appeal, together with four printed paper copies, may then be lodged in the Parliament Office,§ and if the House be then

\* Where several Orders are appealed from, *each* Order must be headed with a statement of the Court and the date of the Order.

† In the event of the Autograph signatures not being subscribed to the parchment Appeal, the draft containing them must be shown to the Clerks of the Judicial Department at the time of lodging the Appeal.

‡ It will be found convenient that the appellants’ agent should supply the other side with at least five additional printed copies of the appeal.

§ See also paragraph 9.

Standing  
Order No. II.  
(Certificate of  
Counsel).

Certificate of  
notice to re-  
spondents to  
be written on  
the last page  
of the parch-  
ment appeal.

Presentation  
of the appeal.

sitting, or if not, on the next ensuing meeting of the House, the appeal will be presented to the House, and an Order made requiring the respondents to lodge cases in answer to the appeal. This Order will be issued\* to the appellants' agent for service on the respondents or their solicitors, and the same, together with an affidavit† of due service entered *thereon*, must be returned to the Parliament Office *within* the period granted to the appellant for lodging his printed cases under Standing Order No. V.

**Method of Procedure.**

Order of service—*see* Standing Order No. III.

4. The several periods limited by the Standing Orders take effect from the date of the *presentation* of the appeal to the House which is the date at the head of the order of service.

5. Security for costs is given by recognizance to the amount of 500*l.* and a bond for 200*l.* In lieu of the bond, payment must be made of 200*l.* into the Fee Fund of the House of Lords *within* one week after the *presentation* of the appeal to the House. (All drafts and cheques to be made payable to "House of Lords Fee Fund," and to be crossed "Bank of England, Western Branch.")

Security for costs—*see* Standing Order No. IV., and also Standing Order No. VII., with regard to expiry of time during recess.  
Recognizance.

6. The *recognizance* must be entered into by each appellant, where there are more than one. (It is usual to issue the recognizance for execution by the appellant at the time of the issue of the bond.) In the event of a *substitute* being proposed, the name of such substitute, together with a certificate of sufficiency by the solicitor or agent of the appellants, must be lodged in the Parliament Office within one week after the *presentation* of the appeal to the House; two clear days' notice of the name so proposed, together with a copy of the certificate, having been previously given to the solicitor or agent of the respondents. For form of Certificate, *see* Appendix A.‡

7. The *bond* must be entered into by two sufficient sureties to the satisfaction of the Clerk of the Parliaments. The names of the proposed sureties, together with a certificate of sufficiency by the solicitor or agent of the appellants, must be lodged in the Parliament Office within one week after the *presentation* of the appeal to the House; two clear days' notice of the names so proposed, together with a copy of the certificate, having been previously given to the solicitor or agent of the respondents. For form of Certificate, *see* Appendix A.‡

Bond.

8. It is the duty of the solicitor or agent of the appellants, on giving the respondent's solicitor or agent notice of the names proposed as sureties or substitute, to furnish him with such information as will enable him to ascertain the sufficiency of the proposed sureties or substitute.

Information as to sufficiency of sureties, &c., to be given to respondent's agent.

\* In Scotch appeals, when the "Order of Service" is desired on the day of presentation for the purpose of staying execution below, the appeal must be lodged in the Parliament Office not later than *one o'clock* on the day of presentation, accompanied by a letter from the agent stating that the "Order" is required for the purpose of staying execution.

† Affidavit to be sworn before a Commissioner duly appointed to administer oaths in England or Ireland or a Justice of the Peace in Scotland.

‡ Forms to be filled up can be obtained on application to the Judicial Department.



Method of Procedure.

9. Whenever possible, it will be found convenient to lodge the above certificates, &c., relating to the recognizance and bond at the time of lodging the appeal. When this cannot be done, the appellant's agent should be prepared to state whether the recognizance is to be entered into by the appellant in person or by substitute, and whether a bond will be executed or the 200*l.* deposited.

## Execution of recognizance and bond.

10. At the termination of one week from the lodgment of the above certificates, the *bond* and *recognizance* are issued to the solicitor or agent of the appellants for execution before a Commissioner appointed to administer oaths in the Supreme Court of Judicature in England or in Ireland, or before a Justice of the Peace in Scotland.

## Return of recognizance and bond.

11. The bond and the recognizance (whether entered into by the appellants or by a substitute) *must* be returned to the Parliament Office within one week from the date of the issue thereof to the solicitor or agent of the appellants.

## Objection to sureties or substitute.

12. If objection be taken by the respondent to the sureties or substitute proposed by the appellant, the respondent's agent must address a letter to the Clerk of the Parliaments setting forth the nature of the objection. This letter must be lodged in the Parliament Office within one week from the lodgment of the certificates of sufficiency in the Parliament Office.

## Justification of sureties or substitute.

13. In the event of the Clerk of the Parliaments requiring a justification of the sureties, the appellant's agent must within one week from the date of an official notice to him to that effect, lodge in the Parliament Office an affidavit or affidavits by the proposed sureties setting forth specifically the nature of the property in consideration of which they claim to be accepted as sureties in respect of the bond and also declaring that the property in question is unincumbered. A copy of the affidavit or affidavits must be served on the agent of the respondents before lodging the same in the Parliament Office. If the respondents desire to file counter affidavits, the same should be lodged with as little delay as possible, copies having been served on the agent of the appellants.

14. If on perusing and considering these affidavits the Clerk of the Parliaments deems the proposed sureties not satisfactory, the appellant is required to pay into the Fee Fund of the House the sum of 200*l.*, as security for the costs of the appeal, within four weeks from the date of an official notice by the Clerk of the Parliaments intimating his dissatisfaction with the proposed sureties. In default of such payment within the period aforesaid the appeal will stand dismissed.

15. The like practice is to be observed with regard to the substitute for the recognizance, with this exception, that in the event of the substitute being deemed by the Clerk of the Parliaments not satisfactory, the appellant or appellants are required to enter personally into the usual recognizance.

## Appearance on behalf of respondents.

16. The solicitors of those respondents who purpose lodging printed cases in answer to the appeal should attend at the Parlia-

ment Office for the purpose of ascertaining the due execution of the recognizance and bond, and entering their names in the appearance book. (Only solicitors who have thus entered appearance in the cause are entitled to notice of the meeting of the Appeal Committee.)

**Method of Procedure.**

17. Petitions presented in *incidental* applications are required to be engrossed on *foolscap*, *bookwise*; with regard to petitions in which an assent cannot be obtained, two clear days' previous notice of the intention to present, together with a copy of the petition, must be served on the opposing agent, and a *duplicate* of the petition must be lodged in the Parliament Office, together with the original petition. The form of a petition for extension of time to lodge the appellant's cases is given in Appendix C.

Incidental petitions. Duplicate required where assent is not given.

18. Forms of petitions (subject to modification, if required), for the restoration of an appeal, for leave to sue *in formá pauperis*, for revivor, and for withdrawal of an appeal, can be obtained from the judicial department. It will be found advisable in exceptional cases to submit a draft of the petition to the clerks of the judicial department.

19. Counsel are not heard before the Appeal Committee. All affidavits intended to be used in the Appeal Committee must be lodged with the opposing agent within a reasonable time before the meeting of the Committee, but are not to be filed in the Parliament Office.

Appeal Committee. Counsel not heard. Affidavits.

20. In English appeals six weeks time, and in Irish and Scotch appeals eight weeks time, from the date of the presentation of the appeal, is granted to all parties to lodge printed cases and the appendix thereto. These periods, when expiring during a Recess of the House, are extended by Standing Order No. VII. Petitions for extension of time, *lodged* during the *prorogation of Parliament* (unless the House of Lords be sitting for judicial business), in cases in which time has been *already extended* on petition, do not prevent the dismissal of an appeal.

Printed cases and Appendix, and "setting down" cause for hearing—see Standing Order No. V.; and also Standing Order No. VII.

21. In appeals in which the parties are able to agree in their statement of the subject-matter, it is optional to lodge a *joint* case with reasons *pro* and *con*, following the practice heretofore in use in Common Law Appeals on a special case.

22. It is obligatory on the appellant, within the respective periods so limited as above, to lodge his printed cases, or the joint case before mentioned, and a printed appendix consisting of such documents, or parts thereof, used in evidence in the Court below, as may be necessary for reference on the argument of the appeal in support of his case. This appendix will be for the use of both parties on the hearing of the appeal. (See following paragraph with regard to the printing of *additional* documents by the respondent.)

23. It is the duty of the appellant, with as little delay as possible after the presentation of the appeal, to furnish to the respondent a list of the proposed documents, and in due course a proof copy of

Preparation of Appendix.



**Method of Procedure.****Respondent's additional documents.**

the appendix. The proof is to be examined with the original documents by the respective solicitors of the parties. (Ten copies of the appendix, as soon as printed, to be delivered to the solicitor of the respondent.) The respondent is allowed to print any *additional* documents, used in evidence in the Court below, which may be necessary for the support of his case on the argument of the appeal, such documents to be *paged consecutively* with the appendix, in order that the same may be eventually *bound* up with the appendix, and form *one* document for the use of the House on the hearing of the appeal. (The proof to be examined, as aforesaid, by the respective solicitors, and prints delivered to the solicitor of the appellant.) Shorthand notes of arguments in the Courts below must not be printed by either party.

24. The costs incurred in printing the appendix will, in the first instance, be borne by the appellant, and the cost of the *additional* documents by the respondent, but these costs will ultimately be subject to the decision of the House with regard to the costs of the appeal.

**Signature of counsel to case—see Standing Order No. V.**  
**Form of printed case.**  
**Reference to report of cause below.**

25. The printed case must be signed by one or more counsel who shall have attended as counsel in the Court below, or shall purpose attending as counsel on the argument at the bar.

26. The case and appendix must be printed quarto size, with seven or eight letters down the margin, and the title page of the appellant's case must contain, at the top, a reference to the report of the cause below, if reported, or, if not reported, "catch words" or "index words" similar to those prefixed to reports of causes in the law reports. The case and appendix should be submitted *in proof* to the clerks in the Judicial Office.

27. Where reference is made to a document printed in the appendix, the case must contain a marginal note of the page of the appendix containing such document. The appendix must contain an index to the documents therein.

**Number of printed cases required to be lodged by the appellant and respondent.**

28. Forty copies of each case and appendix are required to be lodged in the Parliament Office to comply with Standing Order No. V.; and subsequently, on the lodgment of the respondent's case, ten *bound* copies (*see directions in the Appendix hereto as to binding printed cases, appendix, additional documents, and printed copies of the appeal for the use of the House on the hearing of the appeal*).

**Setting down for hearing *ex parte*.**  
**Subsequent lodgment of respondent's case.**

29. A respondent can only be heard at the bar upon lodging a printed case. If the respondent's case is not lodged within the time specified in the order of service, the cause is, on the lodgment of the appellant's case and the appendix, "set down for hearing *ex parte*;" but the respondent may nevertheless at any time afterwards lodge his printed case, and thus put himself in the same position as if he had lodged it within the time specified in the order of service. When, however, the lodgment has been delayed until a day for hearing the cause has been actually appointed the respondent is required to petition for leave to lodge his printed case, and submit to whatever order the House may make on his petition. Where several persons are called as respondents to an

**Respondents desiring to**



appeal, and they desire to lodge *separate* cases, a petition must be presented to the House for leave to do so. The petition must set forth the reasons for a severance.

**Method of Procedure.**

lodge *separate* cases.

Exchange of printed cases.

30. After the lodgment of the printed cases by the appellants and respondents, the respective cases are to be exchanged at the offices of the solicitors; the respondents' agent supplying the appellants' agent with the additional number of cases required for the *bound* copies.

31. As soon as the printed cases of all parties and the appendix thereto have been lodged, it is optional for either side to set down the cause for hearing, but it is *obligatory* on the appellant, upon the lodgment of his printed cases and the appendix to set down the cause for hearing within the time limited by Standing Order No. V. (ex parte as to those respondents who have not already lodged printed cases, upon proof, by affidavit, of the due service of the before-mentioned "order of service" upon the respondents or their solicitors). A respondent who has lodged his printed cases, is at liberty to set down the cause for hearing on the first *sitting* day after the expiration of the time limited by the standing order for lodged printed cases.

Setting down cause for hearing.

32. The cause will then be ripe for hearing, and will take its position on the effective cause list.

33. Causes, the hearing of which has been postponed on the ground of their being under compromise, are placed at the bottom of the effective cause list in the event of no compromise being arrived at.

Causes under compromise.

34. On the hearing of an appeal, the agents are required to have the *originals* (or such copies thereof as were accepted in evidence in the Court below in lieu of the originals) of all documents set forth in the printed case and appendix in readiness below the bar, in case the House desires to refer to such originals or accepted copies (*see* following paragraphs as to exception with regard to Irish and Scotch appeals).

Hearing of the appeal. Documents printed in the Case and Appendix.

35. In Irish appeals, in cases in which the original documents are filed in the Irish Courts, office copies, duly signed by the proper officer of the Court from whence they issue, as certifying the correctness of the same, may be used in lieu of the original documents in all cases in which the authenticity of the original documents is unquestioned (subject always to any special direction by the House on the hearing of the appeal as to the production of the originals).

Irish appeals.

36. In Scotch appeals, a copy of the record, duly certified by the proper officer of the Court below, must be lodged with the Purse-bearer of the Lord Chancellor a few days before the hearing of the appeal. Subject to special direction by the House, the originals of documents contained in the record are not required to be at the bar.

Scotch appeals.

37. In the event of the death of any of the parties to an appeal, immediate notice should be given by letter addressed to the Clerk of the Parliaments, and lodged in the Judicial Office. The letter

Abatement—*see* Standing Order No. VIII.

**Method of  
Procedure.**

must state whether the appeal abates or does not abate by reason of the death in question.

An appeal is held to abate through death when it becomes necessary to add a new party or parties to the appeal to represent the deceased person's interest.

An appeal is held not to abate through death when the interest of the deceased person is represented by any of the surviving parties to the appeal.

In appeals from England and Ireland, in which it is necessary to add new parties to the appeal, an order must be first obtained in the Court below making such persons parties to the cause, and an office copy of the order must be annexed to the petition for revival presented to this House.

In appeals from Scotland, the record being closed in the Court below, the petition for revival is presented directly to the House, and a certified copy of the confirmation of the executors of the deceased person must be annexed to the petition.

In the case of appeals which do not abate through death it is necessary in the printed cases to print the words "(since deceased)" against the name of the deceased person in the title of the appeal.

Defect through  
bankruptcy—  
*see* Standing  
Order  
No. VIII.

In the case of an appeal which becomes defective through the bankruptcy of any of the parties, a letter must be addressed to the Clerk of the Parliaments, and lodged in the Judicial Office, stating the fact of such bankruptcy, and to this letter must be annexed an office copy of the order of the Court adjudicating bankruptcy.

The effect of abatement, or of defect through bankruptcy on the procedure of the appeal, the period within which steps must be taken for a revival of the appeal, or for rendering the same effective, and regulations for the lodgment of supplemental cases, are set forth in Standing Order No. VIII.

Costs—*see*  
Standing  
Order No. X.,  
and directions  
as to the taxa-  
tion of costs,  
Appendix E.  
Directions as  
to the sum of  
£200 under  
Standing  
Order No. IV.  
Appeals  
affirmed.

38. Forms of bills of costs relating to appeal cases may be obtained at the office for the sale of printed papers, House of Lords.

39. In all cases where the appellant has paid in the sum of £200 as directed by Standing Order No. IV., and where the House shall make any order for payment of costs by the appellant to the respondent, the Clerk of the Parliaments or Clerk Assistant shall pay over to the respondent or his agent the said sum of £200, or so much thereof as will liquidate the amount reported to the Clerk of the Parliaments or Clerk Assistant by the Taxing Officer, as being due from the appellant to the respondent in respect to the appeal. And in all cases where the amount so reported by the Taxing Officer shall exceed £200, the Clerk of the Parliaments or Clerk Assistant shall in his certificate credit the appellant with the £200 so paid over to the respondent. And where there shall be two or more respondents entitled to their separate costs, the said £200 shall be divided between the respondents in proportion to the amount of costs reported by the Taxing Officer to be due to each respondent. And where, after satisfying the order of the House, there shall be any sum remaining, part of the said £200, the same shall be paid back to the appellant or his agent upon a proper receipt for the same being given to the Clerk of the Parliaments or Clerk Assistant.

Appeals  
reversed.

40. In all cases in which the appellant is not ordered to pay the



costs of the appeal, the Clerk of the Parliaments or Clerk Assistant shall, on receiving a proper receipt for the same, pay back to the appellant or his agent the said sum of £200.

**Method of  
Procedure.**

41. In cases in which an appeal is dismissed for want of prosecution, the appellant shall be at liberty to serve a notice of such dismissal according to the form set forth in Appendix D upon the agent of the respondents (such service to be verified, if necessary, by affidavit), and unless the respondent shall, within four weeks from the date of such service, if the House be sitting at the expiration of the said four weeks, or, if not, then not later than the third sitting day of the next ensuing sittings of the House, lodge in the office of the Taxing Officer of the House a copy of his bill of costs, the Clerk of the Parliaments or Clerk Assistant shall, upon a proper receipt for the same being given, repay to the appellant or his agent the said sum of £200. In the event of the respondent so lodging his bill of costs as aforesaid, the Taxing Officer may, if the sum demanded by the respondent be less than £200, tax the same, and the Clerk of the Parliaments or Clerk Assistant shall pay over to the respondent or his agent so much of the said sum of £200 as will liquidate the amount reported to the Clerk of the Parliaments or Clerk Assistant as being due from the appellant to the respondent in respect of the appeal, and the remaining portion of the said sum of £200 shall be paid back to the appellant or his agent upon a proper receipt for the same being given to the Clerk of the Parliaments or Clerk Assistant.

Appeals dismissed for want of prosecution.

## SUMMARY OF ORDINARY PROCEDURE IN APPEALS.

**Ordinary  
Procedure.**

(For full Instructions see foregoing "Directions for Agents," and the Standing Orders.)

1. A proof copy of the petition of appeal may, when deemed necessary, be submitted to the Clerks of the Judicial Department.
2. Lodgment of appeal, printed on parchment, together with four paper copies thereof, in the Parliament Office for presentation to the House,—intimation with regard to recognizance and bond.
3. Issue to appellant's agent of "Order of Service."
4. Payment of £200, or lodgment of certificate with regard to bond; and lodgment of certificate with regard to substitute for recognizance.
5. Issue to appellant's agent of recognizance and bond for execution.
6. Return of recognizance and bond.
7. Attendance of respondent's agent to enter appearance, and inspect recognizance and bond.
8. Return of "Order of Service," with affidavit entered thereon.



Ordinary  
Procedure.

9. Lodgment of forty printed copies of case and appendix. A proof copy of the case may, when deemed necessary, be submitted to the Clerks of the Judicial Department.
10. Setting down cause for hearing.
11. Lodgment by appellant of ten bound copies of cases, &c.
12. Hearing of appeal, directions as to original documents.
13. Directions with regard to abatement by death, or defect by bankruptcy.
14. Directions with regard to the taxation of costs, &c.

Standing  
Orders.

STANDING ORDERS APPLICABLE TO ALL APPEALS  
PRESENTED TO THE HOUSE OF LORDS ON OR  
AFTER THE 1ST DAY OF NOVEMBER, 1876.

## STANDING ORDER I.

*Standing Order I. is only applicable to Decrees, &c., pronounced on and after the 1st day of November, 1876.)*

Time limited  
for presenting  
appeals.

Ordered, that, except where otherwise provided by Statute, no petition of appeal be received by this House unless the same be lodged in the Parliament Office for presentation to the House within one year from the date of the last decree, order, judgment, or interlocutor appealed from.

In cases in which the person entitled to appeal be within the age of one and twenty years, or covert, non compos mentis, imprisoned, or out of Great Britain and Ireland, such person may be at liberty to present his appeal to the House, provided that the same be lodged in the Parliament Office within one year next after full age, discoverture, coming of sound mind, enlargement out of prison, or coming into Great Britain or Ireland: But in no case shall any person or persons be allowed a longer time, on account of mere absence, to present an appeal, than five years from the date of the last decree, order, judgment, or interlocutor appealed against.

See *Phillips v. Fothergill*, 11 App. Cas. 466.

## STANDING ORDER II.

Appeals to be  
signed and  
certified by  
counsel.

Ordered, that all petitions of appeal be signed, and the reasonableness thereof certified, by two counsel who shall have attended as counsel in the court below, or shall purpose attending as counsel at the hearing in this House.

## STANDING ORDER III.

“Order of  
service.”

Ordered, that the “Order of Service” issued upon the presentation of an appeal for service on the respondent or his solicitor, be returned to the Parliament Office, together with an affidavit of due service entered thereon, within the time limited by Standing Order No. V. for the appellant to lodge his printed cases, unless within

that period all the respondents shall have lodged their printed cases; in default, the appeal to stand dismissed.

**Standing  
Orders.**

STANDING ORDER IV.

Ordered, in all appeals that the appellant or appellants do give security to the Clerk of the Parliaments by recognizance to be entered into, in person or by substitute, to the Queen of the penalty of five hundred pounds, conditioned to pay to the respondent or respondents all such costs as may be ordered to be paid by the House in the matter of the appeal; and further, that the appellant or appellants do procure two sufficient sureties, to the satisfaction of the Clerk of the Parliaments, to enter into a joint and several bond to the amount of two hundred pounds, or do pay into the account of the Fee Fund of the House of Lords the sum of two hundred pounds; such bond, or such sum of two hundred pounds, to be subject to the Order of the House with regard to the costs of the appeal: Ordered, that within one week after the presentation of the appeal the appellant or appellants do pay in to the account of the Fee Fund of the House of Lords the said sum of two hundred pounds, or submit to the Clerk of the Parliaments the names of the sureties proposed to enter into the said bond; and, in the event of a substitute being proposed to enter into the said recognizance, the name of such substitute; two clear days' previous notice of the names so proposed for bond and recognizance to be given to the solicitor or agent of the respondent:

Security for costs.

Ordered, that, in the event of the Clerk of the Parliaments requiring a justification of the sureties, or substitute, the appellant's agent shall, within one week from the date of an official notice to him to that effect, lodge in the Parliament Office an affidavit or affidavits by the proposed sureties, or substitute, setting forth specifically the nature of the property in consideration of which they claim to be accepted as sureties in respect of the bond, or as substitute in respect of the recognizance, and also declaring that the property in question is unincumbered: Ordered, that, in the event of such sureties not been deemed satisfactory by the Clerk of the Parliaments, the appellant or appellants shall, within four weeks from the date of an official notice by the Clerk of the Parliaments to that effect, pay into the account of the Fee Fund of the House of Lords the sum of two hundred pounds, to be subject to the Order of the House with regard to the costs of the appeal; and, in the event of such substitute not been deemed satisfactory by the Clerk of the Parliaments, the appellant or appellants shall enter into the usual recognizance in person:

Justification of sureties and substitute.

Ordered, that the said bond and the recognizance (whether entered into by the appellants or by a substitute) be returned to the Parliament Office duly executed within one week from the date of the issue thereof to the solicitor or agent of the appellant or appellants.

Period for return of bond and recognizance to Parliament Office.

On default by the appellant or appellants in complying with the above conditions, the appeal to stand dismissed.

STANDING ORDER V.

1. Ordered, that in English appeals the printed cases and the appendix thereto be lodged in the Parliament Office within six

Printed cases, time limited for lodging,



<p><b>Standing Orders.</b></p> <hr/> <p>and for setting down the cause for hearing.</p>	<p>weeks from the date of the presentation of the appeal to the House; in Scotch and Irish appeals, within eight weeks; and the appeal set down for hearing on the first <i>sitting</i> day after the expiration of those respective periods (or as soon before, at the option of either party, as all the printed cases and the appendix shall have been lodged); on default by the appellant the appeal to stand dismissed.</p>
<p>Scotch appeals.</p>	<p>2. Ordered, that in all appeals from Scotland the appellant alone, in his printed case or in the appendix thereto, shall lay before this House a printed copy of the record as authenticated by the Lord Ordinary; together with a supplement containing an account, without argument or statement of other facts, of the further steps which have been taken in the cause since the record was completed, and containing also copies of the interlocutors or parts of interlocutors complained of; and each party shall in their cases lay before the House a copy of the case presented by them respectively to the Court of Session, if any such case was presented there, with a short summary of any additional reasons upon which he means to insist; and if there shall have been no case presented to the Court of Session, then each party shall set forth in his case the reasons upon which he founds his argument, as shortly and succinctly as possible.</p>
<p>Printed cases to be signed by counsel.</p>	<p>3. Ordered, that all printed cases be signed by one or more counsel, who shall have attended as counsel in the Court below, or shall purpose attending as counsel at the hearing in this House.</p>

## STANDING ORDER VI.

<p>Cross appeals.</p>	<p>Ordered, that all cross appeals be presented to the House within the period allowed by Standing Order No. V. for lodging cases in the original appeal.</p>
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## STANDING ORDER VII.

<p>Expiry of time during recess.</p>	<p>Ordered, with regard to appeals in which the periods under Standing Orders, Nos. III., IV., V. and VI. expire during the recess of the House, that such periods be extended to the third sitting day of the next ensuing meeting of the House.</p>
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## STANDING ORDER VIII.

<p>Abatement or defect.</p>	<p>Ordered, that in the event of abatement by death or defect through bankruptcy, an appeal shall not stand dismissed for default under Standing Orders Nos. III., IV., V., provided that notice of such abatement or defect be given by letter addressed to the Clerk of the Parliaments and lodged in the Judicial Office prior to the expiration of the period limited by the Standing Order under which the appeal would otherwise have stood dismissed.</p>
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<p>Revivor, &amp;c.</p>	<p>Ordered, that all appeals marked on the Cause List of the House as abated or defective shall stand dismissed unless within three months from the date of the notice to the Clerk of the Parliaments of abatement or defect, if the House be then sitting, or, if not, then not later than the third sitting day of the next ensuing sittings of the House, a petition shall be presented to the House for reviving the appeal or for rendering the same effective.</p>
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Ordered, that where any party or parties to an appeal shall die pending the same, subsequently to the printed cases having been lodged, and the appeal shall be revived against his or her representative or representatives as the person or persons standing in the place of the person or persons so dying as aforesaid, a supplemental case shall be lodged by the party or parties so reviving the same respectively, stating the Order or Orders respectively made by the House in such case.

**Standing Orders.**

Supplemental cases to be delivered in where appeals are revived or parties added.

The like rule shall be observed by the appellant and respondent respectively, where any person or persons shall, by leave of the House, upon petition or otherwise, be added as a party or parties to the said appeal after the printed cases in such appeal shall have been lodged.

**STANDING ORDER IX.**

Ordered, that when any petition of appeal shall be presented to this House from any interlocutory judgment of either division of the Lords of Session in Scotland, the counsel who shall sign the said petition, or two of the counsel for the party or parties in the Court below, shall sign a certificate or declaration, stating either that leave was given by that division of the Judges pronouncing such interlocutory judgment to the appellant or appellants to present such petition of appeal, or that there was a difference of opinion amongst the Judges of the said division pronouncing such interlocutory judgment.

Scotch appeals.  
Certificate of leave or difference of opinion to be signed by counsel on appeals.

**STANDING ORDER X.**

Ordered, that the Clerk of the Parliaments shall appoint such person as he may think fit as Taxing Officer, and in all cases in which this House shall make any order for payment of costs by any party or parties in any cause without specifying the amount, the Taxing Officer may, upon the application of either party, tax and ascertain the amount thereof, and report the same to the Clerk of the Parliaments or Clerk Assistant: And it is further ordered, that the same fees shall be demanded from and paid by the party applying for such taxation for and in respect thereof as are now or shall be fixed by any resolution of this House concerning such fees; and the Taxing Officer may, if he think fit, either add or deduct the whole or a part of such fees at the foot of his report: and the Clerk of the Parliaments or Clerk Assistant may give a certificate of such costs, expressing the amount so reported to him as aforesaid, and in his certificate regard shall be had to the sum of £200 where that amount has been paid in to the account of the Fee Fund of the House as directed by Standing Order No. IV.; and the amount in money certified by him in such certificate shall be the sum to be demanded and paid under or by virtue of such order as aforesaid for payment of costs.

Taxation of costs.

Forms, &c.

## APPENDIX A.

## Certificate of Sufficiency of Sureties, &amp;c.

Lodged in the Parliament Office on the                      day of                      ,  
 18                      .  
 In the House of Lords.

“A. and others v. B. and others.”

In compliance with Standing Order No. IV., I [we] submit the names of (*full name*) of (*address*) and (*full name*) of (*address*), as fit and proper sureties [*or, as a fit and proper substitute*] to enter into the bond [*recognizance*] thereby required; and I [we] certify that, in my [our] belief, the said (*full name*) and the said (*full name*) are each [*is*] worth upwards of £200 [*£500*] over and above their [*his*] just debts.

(*This certificate may be signed by the COUNTRY solicitor or agent of the appellants.*)

I [we] certify that a copy of the above certificate, with two clear days' notice of the intention to lodge the same in the Parliament Office, has been served on the solicitors or agents of the respondents.

(*To be signed by the LONDON solicitor or agent of the appellants.*)

## APPENDIX B.

**Directions for Binding Printed Cases and Printed Copies of the Appeal for the use of the Law Lords.**

1. Ten copies bound in purple cloth; two of the ten to be interleaved, as regards the cases only.
2. Short title of cause on the back.
3. Label on side, stating short title of cause and contents of the volume, thus—

“A—— and others v. B—— and others.”

Printed copy of the appeal.

Appellant's case.

Respondent B.'s case.

Respondent C.'s case (where *separate* cases are allowed to be lodged on behalf of the respondents).

Appendix (consisting of the Appendix lodged by the appellant, and the *additional* documents, if any, lodged by the respondent).

4. The volume to be indented, and the names of the parties written on the indentations to their respective cases.

5. The bound copies to be lodged immediately after the respondent's cases are delivered in.

In dealing with bulky cases, it may be found advisable to bind the Appendix as a separate volume.

It is the duty of the appellant's agent to carry out these directions.

APPENDIX C.

**Petition for Extension of Time to lodge Cases, &c.**

*To be engrossed on foolscap paper, and lodged in the Parliament Office, if assented to by Respondent's Agent. If not assented to, a copy, and two clear days' notice of intention to present, must be given to Respondent's Agent, and the original Petition, and a duplicate thereof, lodged in the Parliament Office.)*

in the House of Lords.

*(Insert Short Title of Cause.)*

To the Right Honourable the House of Lords.

The humble petition of the Appellant

sheweth,

That your Petitioner presented Petition of Appeal on the day of \_\_\_\_\_ complaining of *[insert dates of Orders or interlocutors complained of]*.

That the time allowed by Standing Order No. V. (*[or]* extended by your Lordships' Order of the *[state date]*) for the Appellant to lodge his printed cases and the Appendix, will expire on the *[state date]*.

That your Petitioner *[set forth cause of delay]*.

Your Petitioner therefore humbly prays that your Lordships will be pleased to grant him an extension of time until *[specify the date to which extension of time is required]* to lodge his printed cases, and the appendix, and set down the cause for hearing.

And your Petitioner will ever pray.

\_\_\_\_\_, Agents for the Appellant.

We consent to the prayer of the above Petition.

\_\_\_\_\_, Agents for the Respondents.

APPENDIX D.

**Form of Notice to the Respondent or his Agent with regard to the Application of the Appellant for repayment of the sum of £200 under Standing Order No. IV.**

in the House of Lords.

A. Appellant.

B. Respondent.

*(Appeal lately depending in the House of Lords.)*

Take notice that the above appeal has been dismissed for want of prosecution, and that the appellant intends to apply to the Clerk of the Parliaments for repayment of the sum of 200*l.* paid by him to the House of Lords Fee Fund under Standing Order No. IV.



Forms, &c.

The respondent is required by the Rules of the House, if any costs have been incurred by him in respect of the appeal, to lodge with the Taxing Officer of the House a copy of his bill of costs within four weeks from the date of the service of this notice upon the respondent or his agent, if the House of Lords be then sitting, or not later than the third day on which the House shall sit after the expiration of the said four weeks; and in default, the Clerk of the Parliaments will be at liberty forthwith to repay to the appellant the said sum of 200*l*.

To

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APPENDIX E.

**Costs relating to Appeals taxed under a Judgment or Order of the House and Standing Order No. 10.**

Applications must be made by depositing in the office of the taxing officer a copy of the bill of costs, with an endorsement thereon stating that "a copy of this bill of costs was on the  
 " day of                      served upon *A. B.*, the agent for the appellant or  
 " the respondent, as the case may be, and we hereby request that  
 " an appointment may be made to tax the same."

Dated this                      day of                      188 .

*A. B.*,

To the                                      Agent for the appellant or respondent,  
 Taxing officer of the House of Lords.                      as the case may be.

NOTE.—The taxing office is open throughout the session, and from the first Monday in the month of December in each year.

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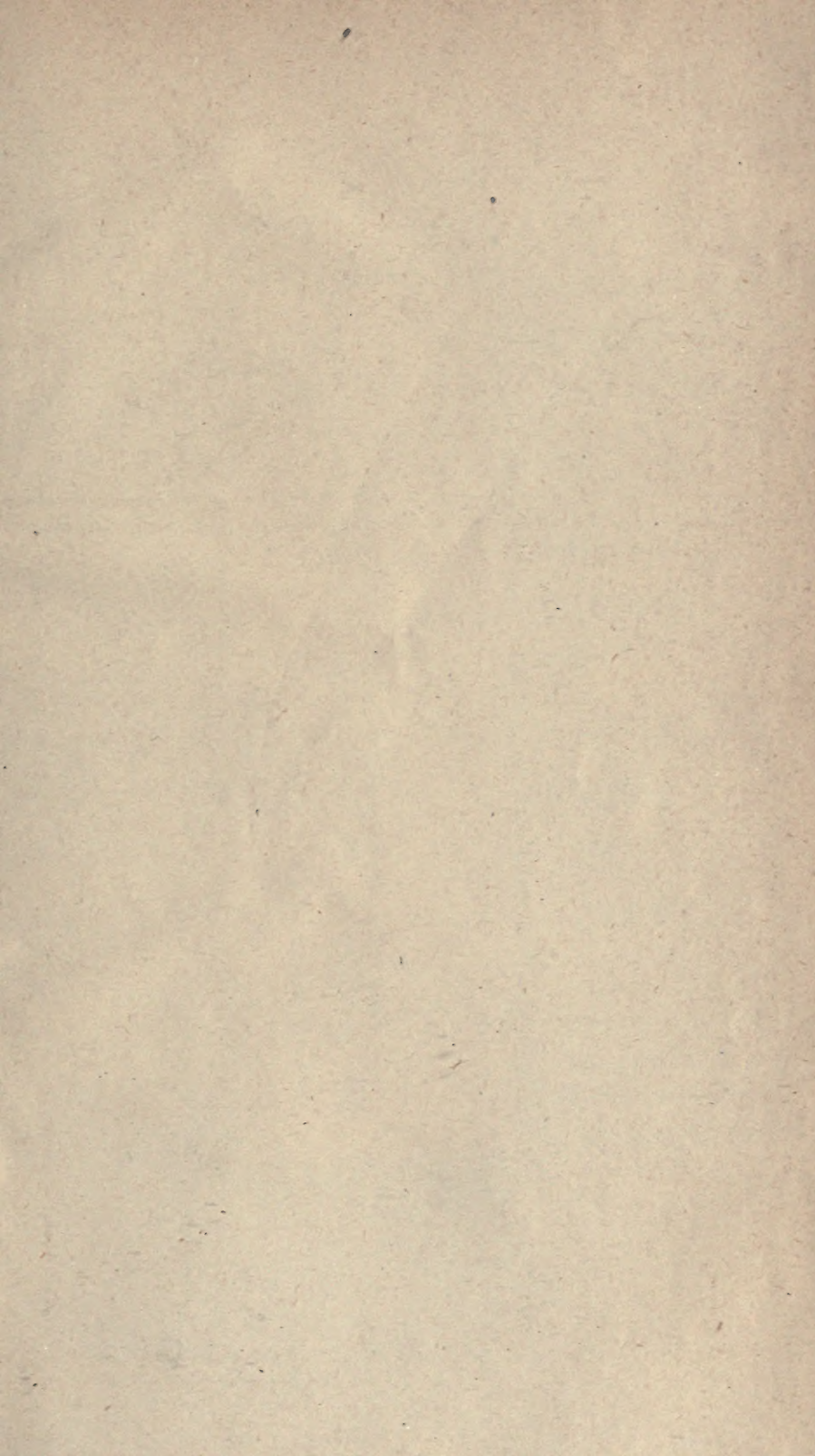
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